

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. BAIL APPLICATION NO. 1506 OF 2016

Sukumar @ Raosaheb Pandurang Kadam ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr. Umesh H. Pawar, Advocate for the Applicant.

Mrs. Veera Shinde, A.P.P. for the Respondent – State.

Police Havaladar - Mr.A.D.Gaikwad (Ashta Police Station) is present.

CORAM : A. M. BADAR, J.

DATE : 29th JULY, 2016

P.C. :

1 The applicant/accused in Crime No. 73 of 2015, registered with the Ashta Police Station, Dist. Sangli for the offences punishable under sections 363, 366A, 376 of the Indian Penal Code and under sections 4,5 (J)(2) and 6 of Protection of Children From Sexual Offence Act, 2012, by this application under section 439 of the Criminal Procedure Code is praying for releasing him on bail on filing chargesheet.

2 Heard the learned counsel appearing for the Applicant/accused. He argued that the applicant is young boy with whom the alleged minor girl of the crime in question joined his company as she was not willing to get married at the

instance of her father with a person not of her choice. Learned counsel for the applicant further argued that thereafter, the applicant/accused married to alleged victim and they started co-habiting. Out of this wed lock, the alleged victim girl gave birth to a female child. My attention is drawn to the letter of alleged victim, addressed to the police, as well as her statement under section 164 of the Indian Penal Code.

3 Learned APP opposed the application by contending that the crime in question is serious and at the time of the alleged incident, the victim girl was 15 years and 3 months old. Therefore, according to the learned APP this is not a fit case to release the applicant on bail.

4 Perused the chargesheet. FIR came to be lodged by informant - Appasaheb Bhimana Changond on 29.04.2015. It is averred in the FIR that on 24.04.2015 his minor daughter left home on the pretext of going to school but she did not return. It is seen that on 24.04.2015 itself the minor girl has addressed a letter to the police and the same is finding its place in the chargesheet. In the said letter the alleged minor victim of the crime has informed the police that her parents are fixing her marriage with a person aged about 38 years. The alleged victim further informed that she does not desire to marry with the person proposed by her parents and therefore, she has left the company of her lawful guardian. It

appears that subsequently, the present applicant and the alleged victim of the crime came to be apprehended by the police in the month of March, 2016. Statement of victim came to be recorded under section 164 of the Criminal Procedure Code by the learned JMFC, Islampur. Perused of the said statement shows that the alleged minor victim herself left the company of her lawful guardian and joined company of the present applicant. It is seen from her statement before the learned Magistrate that the alleged minor victim after leaving company of her lawful guardian informed the present applicant that he should allow her to join his company else she will commit suicide. Statement of the alleged minor victim further shows that thereafter, she married the present applicant and the couple started cohabiting in a rented room. They were earning their livelihood by working as labourer. Because of the wedlock it seems that the alleged minor victim became pregnant.

5 My attention is drawn by the learned counsel for the applicant to second exception to section 375 of the Indian Penal Code, defining the term "Rape". As per this exception, sexual intercourse by a man with his own wife, the wife not under fifteen years of age is excluded from the definition of the term "Rape".

6 Considering the nature of evidence against the present applicant/accused, as is reflected from the chargesheet, his further pre-trial detention is not warranted and, therefore, the order :

ORDER

- i. The bail application is allowed.
- ii. The applicant/accused in Crime No. 73 of 2015, registered with the Ashta Police Station, Dist. Sangli for the offences punishable under sections 363, 366A, 376 of the Indian Penal Code and under sections 4,5 (J)(2) and 6 of Protection of Children From Sexual Offence Act, 2012, be released on bail on executing PR Bond in the sum of Rs. 15,000/- and on furnishing solvent surety in the like amount.
- iii. As a condition of this order, the Applicant should co-operate with the trial court in expeditious disposal of the trial pending against him.
- iv. In addition, the Applicant/accused is directed that he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him

so as to dissuade such person from disclosing such facts either to the Court or to any police officer and that applicant shall not tamper with the prosecution evidence in any manner.

- v. The bail application is disposed of accordingly.

(A. M. BADAR, J.)

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