

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

CRIMINAL BAIL APPLICATION NO.1594 OF 2016

Swapnil Sunil Gaikwad. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Kuldeep U. Nikam, advocate for Applicant.

Ms. Veera Shinde, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : SEPTEMBER 19, 2016**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 20/8/2015 in C.R. No. 27 of 2015 registered at Bhilwadi Police Station for offence punishable under Section 376(2)(i), 341, 354((i)(ii) and 506 of the

Indian Penal Code and 3, 4, 7 and 8 of the Protection of Children from Sexual Offences Act, 2012.

3 It is the case of the prosecution that on 19/8/2015 the victim had lodged a report at the police station alleging that the applicant herein resides in the same vicinity. She has a friend called Tanuja Landage. In January, 2015 Tanuja Landage had brought a message for the victim from the present applicant expressing his love. That the victim had turned down the said proposal. About 10 days later, the applicant had followed her to the school and threatened her to give consent for love. In April, 2015 Tanuja Landage had also brought a message that the applicant was intending to cause harm to her father and brother and that he has called her to his house. When she went to the house of the applicant, the applicant had taken her in the house and driven out Tanuja Landage. He had disrobed her under threat and had ravished her. The victim had informed her parents immediately. The helpless parents had informed about this to the people from their community. The community had called for a

meeting and the applicant was called in the said meeting and he has given an undertaking that he would not enter the village for 10 to 15 years and that he would not trouble the victim in any manner. On 15/8/2015, the applicant had been to the house of the victim and had informed to her mother that he has photographs of the victim and that he would reside in the same village. That the father had again approached to the members of the society but the applicant was adamant. On 17/8/2015 he had again approached the victim. He had stalked the victim to her school and had threatened her of dire consequences and had also told her that somehow, he would abduct her. The victim was therefore, constrained to lodge report against the applicant.

4 The learned Counsel for the applicant submits that in fact, there was love affair between the victim and the applicant and that there is an inordinate delay in lodging the FIR. According to the learned Counsel for the applicant, the incident is of April, 2015, whereas the first information report is lodged in August, 2015. It is also submitted

that the investigation is completed and charge-sheet is filed. Hence, further incarceration is unwarranted.

5 As against this, the learned APP submits that the consent of the victim can not be taken into consideration as the victim is hardly 14 years old. Her date of birth is 25/6/2001. It is also submitted that to maintain honour and dignity of the minor daughter, the parents had not rushed to the police immediately, as it would ruin her future. The victim had informed her parents immediately about the incident. Despite the fact that an undertaking was given by the applicant, he had not abided by the said undertaking. Injustice is done to the minor. The statement of the victim and her friend is recorded under Section 164 of the Code of Criminal Procedure, 1973. There is threat to the safety, dignity and the security of the victim. The clinical examination certificate also shows that there was old healed tear. The history given by the victim to the doctor is that the applicant had threatened her that he would kill her father and brother and

therefore, she could not resist. Hence, the applicant does not deserve to be enlarged on bail.

6 Taking into consideration the nature of allegations, papers of investigation, more particularly, statement of the victim under Section 164 of the Code of Criminal Procedure, 1973, the applicant does not deserve to be enlarged on bail. The victim was minor and there was no reason for her to falsely implicate the applicant. Hence, the application being sans merits stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)