

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1582 OF 2016

Samadhan Satish Gaikwad.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Vijay Killedar, advocate for Applicant.

Ms. Veera Shinde, APP for State.

Mr. S.R. Adhatrao, PSI, Barshi Police Station.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : SEPTEMBER 14, 2016**

P.C.:

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

2 This is an application under section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in Crime No. 266 of 2016 registered at Barshi Police Station, District Solapur for the offence punishable under Section 363, 366A of the

Indian Penal Code and under Section 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

3 On 8/7/2016 one Maya Mane lodged a report at the police station alleging therein that her daughter namely, Prajakta who is 17 years and one month old was studying in 11th standard in Barshi College. That on 3/1/2016 she had been for the naming ceremony of the grand-son of her brother alongwith her family. The applicant had accompanied one of the relatives to the said function. That Prajakta and the applicant had got acquainted with each other and developed friendly relations. The complainant had seen her daughter Prajakta talking to the applicant. She had realised that there was some intimacy between the daughter and the applicant. The applicant had also visited the house of the complainant. The complainant and the applicant belong to the same caste.

4 On 20/6/2016 her daughter Prajakta had left the house voluntarily under the pretext of meeting her friend and had not

returned. On 6/7/2016 her cousin informed her that Prajakta is in the house of the present applicant. According to the complainant, upon enquiry, her daughter had informed her that that she had been lured by the applicant. She had not lodged any report against the applicant at that time. According to the complainant, on 20/6/2016 the applicant herein had abducted her daughter and hence, the offence.

5 It appears from the record that the statement of Prajakta was recorded under Section 164 of the Code of Criminal Procedure, 1973 and she had voluntarily disclosed that she was in love with the present applicant and had left the house voluntarily without being coerced by the present applicant. Prima facie, it appears that the applicant was in love with the daughter of the complainant and that she was against the said relationship.

6 The learned APP submits that the daughter of the complainant had not completed 18 years and hence, the applicant would also be

liable for the offence punishable under the provisions of POCSO Act, 2012.

7 The learned Counsel for the applicant has placed reliance upon the Judgment of the Hon'ble Apex Court in the case of **S. Varadrajan v/s. State of Madras (1965 SC 942)** regarding the mental ability to understand the consequences of her act. The Hon'ble Apex Court held as follows :

“It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of s. 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this

kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.”

8 Hence, taking into consideration the nature of allegations and more particularly, the statement of the victim recorded under the Section 164 of the Code of Criminal Procedure, 1973, which prima facie do not indicate that custodial interrogation would be imperative, the applicant deserves pre-arrest bail

9 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 438 of the Code of Criminal Procedure, 1973. The learned Sessions Judge shall not be influenced by the same while deciding the application for discharge or quashing of FIR or at the time of trial. The same be decided on its own merits.

10 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in Crime No. 266/2016, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- and one or two sureties in the like amount.
- (iii) The applicant shall report to concerned police station as and when called, after issuing notice under Section 160 of the Code of Criminal Procedure, 1973 and cooperate with the investigating agency to the best of his capacity.

11 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)