

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1663 OF 2016

Santosh Vitthal Kale

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Abhijeet Kadam Advocate for Applicant.

Mr. Vinod Chate APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : SEPTEMBER 27, 2016.

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 182 of 2016 registered at Khed police station for offences punishable under section 363 & 366 of the Indian Penal Code and sections 8, 10 & 12 of the Protection of Children from Sexual Offence Act, 2012.

2) It is the case of the prosecution that on 10/08/2016, Dattatray Bhalshinge lodged a report at the police station, alleging therein that he has a daughter who is about 17 years old. That she is studying in 12th standard and

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she is attending the classes at Khed. On 10/08/2016, he had dropped his daughter at S.T. stand at about 8.30 a.m. He was informed by the teacher of the tuition class that his daughter had not attended the classes and therefore, he was sure that some unknown person had abducted his daughter. He had given the description of his daughter. The offence was registered.

3) It appears from the papers of investigation that on 10/08/2016, the victim girl along with the present applicant had gone to the house of the sister of the applicant at Kansegaon, Thane. That about 9.30 p.m., on the same day i.e. 10/08/2016, sister of the applicant had called upon her husband and informed him that the applicant has come home along with an young girl. Upon enquiry, applicant had disclosed to his brother-in-law that the complainant is intending to settle the marriage of his daughter, elsewhere and she is not interested in getting married and therefore, she had requested him to take her anywhere for her security and therefore, they had left together. The brother-in-law of the applicant convinced both of them that it was a wrong step taken by them and that their parents must be searching for them. The brother-in-law namely Santosh Borkar had initially hired a pickup van and had dropped both of them to village Gonde and had reached the house of the

victim at about 4.00 a.m. on 11/08/2016. The girl was safe. The statement of the victim was recorded on 11/08/2016 and she had informed the police that present applicant had followed her in his Indica car on 10/08/2016, when she was on her way to the classes. He threatened her of dire consequences and coerced her to sit in the car and had taken her to Sai Baba temple and thereafter, he had taken her in a train to Lonavala. She has further disclosed that at Lonavala, they changed the train and came back to Mumbai and then they had gone to the house of the sister of the applicant. According to her, applicant had left her at the house of her sister and that his sister and her sister-in-law had threatened her to disclose that she had accompanied the applicant voluntarily.

4) The statement of the victim, *prima facie* would not inspire the confidence of the court. Applicant had not caused any harm to her. The victim girl is about 17 years and 9 months. She has attained the age of understanding. It is an admitted fact that the house of the victim and the applicant are in close proximity and that they were acquainted with each other. It is not her case that she had tried to contact her parents and was restrained by the applicant. In fact the sister of the applicant had brought her

back home without detaining her even for a while.

5) In the case of **S. Varadrajan v/s. State of Madras (1965 SC 942)**

wherein 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”.

6) In view of this, custodial interrogation of the applicant would not be imperative. However, it is made clear that the observations made herein above are *prima facie* in nature and are restricted to an application under section 438

of the Code of Criminal Procedure, 1973 and shall not be considered for the purpose of quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest, applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.
- (iii) Applicant shall report to the concerned police station on 30th September, 1st & 2nd of October 2016 between 10.00 a.m. to 12.00 noon and co-operate with the investigating agency to the best of his capacity.
- (iv) Applicant shall furnish his cellphone/landline number, residential address to the investigating officer. Applicant shall also give cellphone number of the victim girl, if any. The investigating officer shall call for C.D.R. also.
- (v) Application is allowed and disposed of in the above terms.

(SMT. SADHANA S. JADHAV, J.)