

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1991 OF 2016

Mr. Akshay Nitin Gaikwad	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Dayanand C. Awari, Advocate for the applicant.
Mr. Prashant Jadhav, APP, for the State.
Mr. B.S.Doiphode, PSI, Hadapsar Police Station, Pune, puresent.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 30th September, 2016.

P.C.

1. Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 8.8.2016 in Crime No.440 of 2016 registered at Hadapsar Police Station, Pune City initially under Section 363 of the Indian Penal Code. It appears that subsequently, Section 376 of IPC was added.

2. It is the case of the prosecution that on 5.7.2016, one Rajkumar Mahadev Takale lodged a missing report at Hadapsar Police Station, contending therein that his minor daughter Ms. `X' aged about

16 years had left the house to attend her tuitions and not returned home. They all searched for her at all places. However, it was of no avail. The daughter of the complainant returned home on 24.7.2016. She had disclosed to her parents that she was in the company of the present applicant. By then, the first information was lodged.

3. That on 25.7.2016, the victim girl was taken to Sassoon Hospital for medical examination. Upon enquiry by the medical officer, the parents of the victim disclosed that she had been abducted. The victim herself had disclosed to the medical officer that she was acquainted with the applicant namely Akshay for the last two years. The medical certificate shows as follows :-

“The victim had given history of having escaped from home on 20.6.2016. No history of any sexual intercourse during her stay. The victim came back home on 24.7.2016. The victim gives a history of vaginal intercourse 5 months back with her boyfriend namely ‘Veeresh’ with whom her marriage was fixed. No history of physical trauma. The injury certificate further shows that multiple old healed hymen tears. No inflammation. No fresh injuries.”

4. The statement of the victim was then recorded by the police. She had disclosed to the police that she was attending the tuition classes since one year. She had met the applicant. She had got acquainted with him. He had expressed his love for her. That on 20.6.2016, when she was mopping the floor, the applicant had allegedly come out and called upon her. He had given her a Cadbury chocolate and had then asked her to accompany him on his motorcycle. He had then taken her to Lonavala, where they had taken a room on rent. According to her, he had sexual intercourse with her at Lonavala and thereafter he had taken her to his aunt's place at Thane Vitawa. They stayed there for one month and during that period, they had sexual intercourse on 2 – 3 occasions.

5. It is true that the date of birth of the victim girl as shown in the Bonafide Certificate is 6.9.2001. The date of incident is June 2016. She was about 15-1/2 years old at the time of incident. she was knowing the consequences of her act. The history given to the medical officer clearly shows that prior to the applicant, she had sexual intercourse with another person, namely, 'Veeresh' when she

was about 14 years old. It also appears that she had left the house voluntarily and had accompanied the applicant. It prima facie appears that this is a case of love affairs. It is true that since she had not completed 16 years of age, her consent cannot be taken into consideration.

6. Taking into consideration the statement given by her to the doctor, it appears to be a consensual act and in this circumstance, it would not be appropriate to detain the applicant in jail any further.

7. 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. 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.

In the present case, it appears that the victim had voluntarily joined the company of the applicant and stayed with him for one month voluntarily. Moreover, they were in love. In view of the statement before the Medical Officer, the applicant deserves to be enlarged on bail.

8. The observations are prima facie in nature and shall not be considered for the purpose of quashing of FIR, discharge application or at the time of trial.

ORDER

(i) The application is allowed.

(ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more solvent sureties in the like amount.

(iii) The applicant shall report to the concerned police station on 2nd, 9th and 16th October, 2016 between 10 a.m. to 12 noon and give details of his address, cellphone number, landline number etc.

The application is allowed and disposed of in the above terms.

(SMT.SADHANA S.JADHAV, J.)