IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2030 OF 2016

Sachin Subhash Kadam ... Applicant
Vs.
The State of Maharashtra … Respondent

Mr.Aashish Satpute a/w Mr. Aniket U.Nikam,Advocate for the applicant.
Mr. S.S.Pednekar, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 5th October, 2016.

P.C.

1. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 11.8.2015 in Crime No.293 of 2015 registered at Lonikalbhor Police Station, Pune, for the offences punishable under Sections 363, 376(1), 366A of the Indian Penal Code and under Sections 4,8, and 12 of the Protection of Children from Sexual Offices Act, 2012 and also under Section 3(1)(xii), 3(2)(vi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The investigation is completed and charge-sheet is filed.

2. It is the case of the prosecution that one Jyoti Nandu

Khadangale, resident of Near Gujarvasti Ganpati Mandir, Tal. Haveli, Dist. Pune, lodged a report at the police station on 10.8.2016 alleging therein that she resides with her family. Her elder son Swapnil is aged about 18 years and daughter Priyanka is aged 15 years old. That her daughter had left the school when she was studying in 7th Std. That she was learning to sew. She used to go to Indira Nagar to her grandmother's house. It is also alleged in the FIR that six months prior to the loding of the FIR, her daughter had left the house without informing anybody. The mother had suspected her and therefore had assaulted her. It is further alleged that on 9.8.2015, her daughter had left the house without informing anybody. Her mother was searching for her. That her mother met Swapnil Subhash Kadam, who happens to be the brother of the present applicant. He had informed the mother that the applicant was in love with the daughter of the first informant and he was fed up with them. It is also alleged that the love relationship between the applicant and the daughter of the first informant were known to both the families. Initially, the offence was registered under Section 363 of the IPC. Subsequently, the applicant and the daughter of the first informant were found because one of the friend of the applicant had seen them on the road and had informed the brother of the applicant. Since they knew about the report lodged by the first informant, they had

returned to the police station on 11.8.2015. The statement of the daughter of the first informant was recorded wherein she candidly disclosed that she was in love with the present applicant. She had also agreed to marry him, but since there was opposition from both the families, they had eloped. However, she has added that the applicant had induced her to get married and therefore, she had consented to sexual intercourse. The victim was sent for medical examination's. The history given by the victim is as follows :-

> *"The victim gives history that she knows the accused Mr. Sachin Subhash Kadam, 30 years since one year. They were in relationship. They ran away from home on 9.8.2015 to Lonikalbor Railway Station. They had vaginal intercourse on 10.8.2015 which was with consent."*

3. The learned APP vehemently submits that since the victim was less than 18 years old her consent cannot be taken into consideration. It appears from the papers of investigation that the victim was intelligent enough to understand the consequences of her act. She had eloped from the house six months prior to the incident. She has specifically stated to the doctor that she was in love with the present applicant. It is pertinent to note that the Bonafide Certificate, which is a part of the charge-sheet, indicates that the date of birth of the victim is 14.9.2000. This would clearly show

that the victim had attained the age of understanding. Her biological age was less than 18 years. Since she had attained the age of understanding, it can be inferred that she was capable of giving consent.

4. Taking into consideration the nature of allegations, the statements of the victim, the parents of the victim and the family members of the present applicant, it is more than clear that there was a love affair between the applicant and the victim and the fact that the investigation is completed and charge sheet is filed, the applicant deserves to be enlarged on bail.

5. It is made clear that 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.

O R D E R

(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 two sureties in the like amount.

Application stands disposed of.

(SMT.SADHANA S.JADHAV, J.)