

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

CRIMINAL BAIL APPLICATION NO. 2142 OF 2016

Dashrath Vishnu Nehare. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Rameshwar N. Gite, advocate for applicant.

Mr. R.M. Pethe, APP for State.

Mr. Sunil Karale, PSI, Pimpalgaon Basvant Police Station.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : NOVEMBER 29, 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 4/5/2016 in Crime No. 44 of 2016 registered at Pimpalgaon Basvant Police Station. Initially, the offence was registered under section 363 of the Indian Penal Code.

3 It is the prosecution case that Alka Shinde had lodged a report at the police station that her niece was staying with her in the summer vacation. That on 7/3/2016 her niece herself had left the house without informing anything to anybody. On 9/3/2016 she filed a report. On 4/5/2016 the victim girl Ms. X returned home. She was taken to Pimpalgaon Police Station where her statement was recorded. She has stated before the police that she had got acquainted with the present applicant. He used to lure her by sweet talk. He informed her that he is a married man and he has one daughter. He dislikes his wife. He has expressed love for her to which she had succumbed. On 6/3/2016 he had given her cell phone and told her that he would call her in the night. On 7/3/2016 in the midnight, he had called the victim and had induced

her to to elope with him. She had obliged. She met him in the midst of the night. Thereafter, they had been to village Phophashi and were staying in the agricultural land of one Hadas. He had gifted her a mangalsutra and therefore, she presumed that she was married to the applicant. She had further stated that they had sexual intercourse with consent. According to her, subsequently, the applicant had dropped her at Vani bus stand and asked her to go home. She returned home in a pick up van.

4 The age of the victim was 15 years at the time of incident. According to the victim, she was threatened by the applicant that he would eliminate her brother and therefore, she had succumbed. The learned Counsel for the applicant submits that in fact, it was consensual sex and that the applicant had got married to her. It is true that the victim was hardly 15 years old. However, it can be inferred that she had attained the age of understanding as the applicant had given cell phone

and informed her that he would get married to her. She had voluntarily left the house to get married with the applicant. The learned Counsel for the applicant rightly submits that the applicant had not concealed any fact from her and she was aware that he was married person and is a father of one girl.

5 Be that as it may, the investigation is completed and charge-sheet is filed. The victim had categorically stated that she had left her house voluntarily and joined the applicant to get married to him. Taking into consideration the papers of investigation, more particularly, the statement of the victim, the applicant deserves to be enlarged on bail.

6 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 439 of the Code of Criminal Procedure, 1973. The learned Sessions Judge shall not be influenced by the same at the time of trial.

7 Hence following order is passed :

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/- and one or more solvent sureties in the like amount.
- (iii) The applicant shall not reside at Post Umberkhed till the conclusion of the trial.
- (iv) The applicant shall not tamper with the evidence.

8 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)