

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2182 OF 2015

Wahid Jakir Hussain	...	Applicant
Vs.		
The State of Maharashtra & Anr.	...	Respondents

Mr. Manoj Badgujar i/b. Mr. Satish B. Patil, Advocate for the applicant.
Mrs. Rutuja Ambekar, APP for the State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **21st April, 2016.**

P.C.:

This Application is moved by the applicant/accused for bail, as he is facing prosecution for the offences punishable under sections 363, 376 r/w. 34 of the Indian Penal Code and under sections 3 and 4 of Prevention of Children from Sexual Offences Act. The offence is registered at the instance of father of the prosecutrix on 13th February, 2015 in C.R. No. 82 of 2015 with Central Police Station, Ulhasnagar, District Thane.

2. It is the case of the prosecution that on 13th February, 2015 the prosecutrix along with her friend went to school and did not return. Their parents took search of their daughters, however, they were not found. Thereafter, they lodged missing complaint with the police. On the next day, i.e., 14th February, 2015 the police apprehended the girls from Nashik Railway Station. These two girls ran away with the applicant/accused and his friend. The girls were minor. On that night, applicant/accused had

sexual intercourse with the prosecutrix. On the basis of statement of the prosecutrix, the offence of rape was registered. The applicant/accused was arrested on 14th February, 2015 and since then he is in prison.

3. The learned counsel for the applicant/accused submitted that the applicant/accused and prosecutrix both belonged to Muslim Community. The learned counsel submitted that under Muslim Personal Law, a girl attaining puberty is capable to marry a person with the permission of her natural guardian. They both were in love with each other. The applicant/accused and prosecutrix both wanted to marry. He submitted that under such circumstances, the applicant/accused who is behind the bar since last one year is to be granted bail. He submitted that other boy Akbar who is facing same charges, is also released on bail.

4. Learned APP opposed the Application. She submitted that the prosecutrix is 13 years old and in case of Akbar, the prosecutrix is 17 years old.

5. Perused the FIR. It appears from the record that the girl has eloped with the applicant/accused voluntarily and she consented to have sexual intercourse, as the applicant promised to marry her. As per the information given by learned APP, applicant/accused is 26 years old and he is married

having one child. Under the circumstances, the consent of the girl and the voluntary act of the prosecutrix has no value, as it is not a legal valid consent. In Muslim law, the girl attaining puberty is a marriageable age, however, that is applicable in the offence where the issue of marriage is involved. The age of puberty cannot be counted at this stage and personal law is not applicable. Hence, I am not inclined to grant bail to the applicant/accused. The learned Sessions Judge is directed to proceed with the matter as it is a short case and complete it on or before 31st August, 2016.

(MRIDULA BHATKAR, J.)