

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

CRIMINAL BAIL APPLICATION NO. 2389 OF 2016

Akshay Rama Waghmare.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. P.G. Sarda i/b. Mr. Sachin T. Zalte, advocate for Applicant.

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

Mr. S.R. Adhatrao, PSI, Barshi City Police Station, Solapur.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : DECEMBER 19, 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 10/6/2016 in Crime No. 134/2015 registered at Barshi City Police Station for offence punishable under section 376(2)(i)(n), 363, 366(A) of the

Indian Penal Code and under section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012. The investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 26/10/2015 Mangal Bokefode lodged a report at Barshi City Police Station alleging therein that on 14/10/2015 at about 5 p.m. she realised that her daughter Rohini was missing. On 24/10/2015 she learnt that her daughter was residing with the present applicant. The complainant thereafter, took the victim to her house and according to her, she was informed by the victim that on 14/10/2015 the applicant had called upon her and informed her that he desires to get married to her. Thereafter, she had left the house in the company of the present applicant. The victim was about 17 years old at the time of incident and the applicant was about 20 years old at the time when they eloped.

5 It appears from the record that the victim Rohini had voluntarily left the house in the company of the present applicant. In the

interregnum the applicant and the victim were residing at a lodge at Yermala. On 24/11/2015, the applicant had taken the victim to his own house and at that time, the complainant learnt that the victim was in the company of the applicant.

6 The learned APP fairly submits that on 12/8/2015 also Mangal Bokefode had lodged a report at the police station alleging therein that her daughter was abducted by unknown person. On the basis of her report Crime No. 84 of 2015 was registered at Barshi Police Station for the offence punishable under section 363 of the Indian Penal Code. The present applicant was arrested and was enlarged on bail.

7 Upon perusal of the papers of investigation, it prima facie appears that the applicant happens to be in love with the victim and time and again, they have eloped since there is opposition from their family members. The victim has attained the age of understanding.

8 In the case of S. Varadrajan v/s. State of Madras (1965 SC 942), 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.”

9 In view of this, the applicant deserves to be enlarged on bail.

10 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.

11 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.15,000/- and one or two sureties in the like amount.
- (iii) The applicant shall report to the police station as and when called and cooperate with the investigating agency to the best of his capacity.

12 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)