

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2432 OF 2016

Mohammad Jafar Rafik Shaikh

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Veerdhawal Kakade a/w Mr. Prabhakar M. Nadhav Advocate for the Applicant.

Mr. Rajan Salvi APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 5th DECEMBER, 2016.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 18/08/2016 in crime no. 327 of 2016 registered at Akuj Police Station for offence punishable under sections 363, 366 and 376 of the Indian Penal Code. Investigation is completed and charge-sheet is filed.

2) It is the case of the prosecution that on 02/08/2016, Sameer Shaikh lodged a report at the police station that his daughter Ms. 'X' had left the house on 02/08/2016. She had not returned home. He enquired about her

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whereabouts. He had learnt from the friend of his daughter Shreya that his daughter has eloped with the present applicant and that they are going to get married. The first informant had also enquired with the family members of the present applicant and it was learnt that he was also not available. On the basis of his report, crime is registered against the applicant for the offence punishable under section 363, 36 and 376 of the Indian Penal Code.

3) Statement of Ms. 'X' was recorded on 19/08/2016. She has disclosed that applicant used to visit her house as both the families known to each other. She got acquainted with him. The acquaintance had turned into love. He had proposed to her for marriage. She was warned by her parents that she should not continue her friendship with the present applicant. That According to her, the parents had also explained it to the parents of the applicant that he should not continue his relationship with their daughter. That she was not permitted to talk to the applicant on the cellphone and thereafter, he had gifted her a cellphone on which she could talk to him.

4) On 31/08/2016, applicant had allegedly informed her that he is going to abandon his relations with the family members only to join her. He had also expressed her extreme love for her. She had not informed about it to anybody.

They were chatting with each other via SMS on 02/08/2016. He had called her at a particular place. She met him. Thereafter, she clad a Burkha and left with the present applicant. They reached Mumbai. From Mumbai, they travelled to Vapi. There they were moving around as husband and wife. On 05/08/2016, applicant informed her that he has got a job. They started residing in a Chawl on rent. All the neighbours knew them as husband and wife. That they had sexual relations as husband and wife. On 18/08/2016, her father had come to their house along with police and thereafter, she was taken away by her parents. Her statement was recorded in the presence of her mother.

5) Upon perusal of papers of investigation, it reveals that the date of birth of the girl is 22/05/2001. She had eloped from her house along with the applicant on 31/07/2016 and stayed with him as his wife till 18/08/2016.

6) The learned APP submits that the victim was a minor and the submission that it was consensual sex should not be taken into consideration. It is clear from her statement and other material collected in the course of investigation that the victim girl had attained the age of understanding. It was her voluntary act. She had been given understanding by her parents that she should not continue to have relationship with the present applicant and yet by

choice she used to talk to him and had left the house in his company. It is in these circumstances that the applicant deserves to be enlarged on bail. However, it is made clear that observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 50,000/- with one or more solvent sureties in the like amount.
- (iii) Applicant shall not reside in Akluj except for the purpose of trial.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)