

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2453 OF 2016

Dinesh Balu Dhainje	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Shriram S. Kulkarni i/b. Mr. Devidas J. Jadhav, Advocate for the applicant.

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

Mr. Anil Devade, API, Malshiras Police Station, present.

CORAM: SMT.SADHANA S.JADHAV, J.

DATE : 7th December, 2016.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 25.6.2016 in Crime No.139/2016 registered at Malshiras Police Station, Dist. Solapur. The investigation is completed and charge sheet is filed on 22.9.2016 against the accused-applicant for the offences punishable under Sections 363, 366A and 376 of the Indian Penal Code and Sections 4 and 8 of the Protection of Children from Sexual Offences Act.

2. It is the case of the prosecution that on 4.6.2016 Mahadeo Dagdu Shinde lodged a report at Malshiras Police Station alleging therein that he has a daughter Ms.`x' who is about 16 years and 3 months old. That on 2.6.2016, in the middle of the night, he realized that his daughter Ms.`x' was not at home. He woke up other members of the family and enquired about her. That he found a cellphone handset which did not belong to any member of his family. There was a photo of one boy in the cellphone. Upon enquiry, they learnt that the photo was of the present applicant and he was working as a Manager in Meridian Hotel. He was not on duty since the previous day. The complainant also enquired with the family of the applicant. It was reported that he was not at home. The complainant was hence assured that his daughter had left the house with the present applicant. That the applicant and the daughter of the complainant were found at Delhi. The statement of the victim was recorded at Malshiras on 25.6.2016. She had disclosed to the police that the applicant herein was stalking her for quite some time. She succumbed to his gestures. They got acquainted with each other. The acquaintance had turned into love. They used to talk to each other on cellphone which he had given her. Her parents were looking for a proposal. They were coercing her to get married to a boy whom she did not like. She felt harassed and she disclosed the same to

the present applicant and they both decided to elope. On 2.6.2016, at about 11 p.m., she left the house along with the applicant on his motorcycle. He had given her a Mangalsutra. She had adorned the same. They stayed at Hotel Karmala Palace. They had sexual intercourse. She was assured by the present applicant that he would get married to her. She expressed his love for her. Thereafter, they were on a run. They went to Ahmednagar. From there, they went to Indore, then to Bhopal and from Bhopal they went to Delhi. She insisted upon the applicant to get married to her. He refused to marry and at that stage, he informed her that he was already married and at the relevant time his wife was carrying pregnancy of 16 weeks. She was shocked as till that date, he had never disclosed to her that he is a married man. She felt cheated. However, it was too late to turn back and undo things which were already done. She was examined by the doctor at Civil Hospital, Malshiras. She disclosed to the doctor that she was in love with the applicant for about more than 2 years. Both the families had opposed their marriage and therefore on 2.6.2016, she decided to elope and by consent they had sexual intercourse.

3. The learned APP rightly submits that it is an unfortunate incident where the applicant has ruined life of two women i.e. his wife as well as the victim. While deciding an application under Section 439 of

Cr.P.C., it is incumbent upon the Court to consider as to whether further incarceration would be warranted even after filing of the charge sheet.

4. The learned counsel for the applicant, upon instructions, submits that by now the victim is also married. The victim was more than 16 years old. She had attained the age of understanding. Her parents were already planning her marriage due to which she had eloped with the present applicant.

5. Taking into consideration the statement of the victim under Sections 161 and 164 of Cr.P.C. and the disclosure to the medical officer at the time of medical examination, this Court is inclined to enlarge the applicant on bail.

6. In fact, the applicant deserves to be convicted for the offence punishable under Section 420 of the Indian Penal Code as it is clear that he never had an intention to marry her, but had taken the victim for a ride. The investigating agency has been insensitive and has not filed the charge-sheet for the offence punishable under Section 420 of the Indian Penal Code. On the basis of the statement of the victim, there is remote possibility that the applicant would be convicted for the offence punishable under Sections

363, 366A and 376 of the Indian Penal Code, but upon perusal of the statement of the victim, it is writ large that the applicant has committed the offence punishable under Section 420 of the IPC. The learned Special Court while framing charge shall take this aspect into consideration.

7. The learned APP has fairly submitted that it would be appropriate to circulate this order to all Police Stations for the simple reason that in cases like the present one the charge sheet is normally filed under Sections 363, 366 and 376 of IPC. The police is extremely insensitive to the vulnerable victims like the present one who are never informed by the accused that he is a married man. The men tend to take advantage of such vulnerable victims and the whole life is spoiled. At the age of 16 to 18 years, the young girls really do not foresee the damage that would be done to their future by being unthoughtful. They are infatuated and in the moment of infatuation they ruin their lives. It is the responsibility of the State also to see that the prosecution is taken to its logical end so that it acts as a deterrent. The police shall be sensitive and apply their mind to the facts of the case while filing the final report under Section 173 of Cr.P.C.

ORDER

- (i) The application is allowed.
- (ii) The 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) The applicant shall report to Malshiras Police Station on first and 3rd Sunday of each month till framing of charge.

Application stands disposed of.

(SMT. SADHANA S.JADHAV, J.)