

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2410 OF 2015

Mr. Bhushan @ Nitikesh Gajanan Ghabade ... Applicant
Vs.
The State of Maharashtra & Anr. ... Respondents

Mr. Shashi Pandey, Adv. for the applicant.
Mr. Y.M. Nakhawa, APP for the State.

CORAM : SMT ANUJA PRABHUDESSAI, J.
DATE : 20th January, 2016.

P.C. :

1. This is an application for bail filed by the aforesaid applicant who is facing trial in Sessions Case No.15 of 2015 under Sections 376, 363, 366(A) and 506 r/w. 34 of the IPC and under Section 4, 6, 8 & 10 of the Protection of Children from Sexual Offences Act.

2. The case of the prosecution in brief is that the applicant herein had kidnapped a minor girl and had sexually abused her. Mr.Pandey, the learned counsel for the applicant has submitted that the victim was 17 years and 6 months of age. She had voluntarily accompanied the applicant and stayed with him for a period of two months. He has further submitted that the applicant is in custody since 17th March, 2015. The learned counsel for the applicant is ready

to abide by all the terms and conditions imposed by the Court.

3. Mr. Nakhawa, the learned APP has submitted that the statement of the victim prima facie reveals that the applicant herein had forcible sexual intercourse with her. The APP has further submitted that if the applicant is released on bail there is every possibility of the applicant interfering with the victim.

4. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties. The records prima facie reveal that the applicant and the victim were known to each. Her statement prima facie indicates that the applicant used to visit her house along with her brother Pravin. Her statement also reveals that the applicant used to phone her and also used to send her message on the mobile.

5. The statement of the victim prima facie indicates that on 7th January, 2015 the applicant had phoned her and had told her to accompany him. Accordingly the victim had met the applicant and thereafter they had proceeded to the house of paternal aunt of the applicant. The applicant had informed his aunt that they had eloped

therefore she did not allow them to stay in the house. They stayed at Nashik S.T. stand, for two days and thereafter proceeded to Pimpalgaon. The applicant and victim worked in a vineyard for almost a month. Their hut was damaged due to heavy rain and storm and they had no place to stay and hence the applicant had told the victim that they should surrender at the police station.

6. The aforesaid statement prima facie reveals that the victim who was about 17 years 6 months of age had willingly accompanied the applicant. She had lived with him for over a period of two months. During this period she had not complained to any person that the applicant had kidnapped her or that he had forcible sexual relations with her. The relationship appears to be consensual.

7. It is further to be noted that the victim was about 17 years 6 months. She is a minor within the meaning of section 2(d) of POCSO Act however it has to be borne in mind that she was on a verge of attaining majority and this would be one of the mitigating factors. Considering the fact that the applicant himself is a young boy of 25 years of age and is in custody since last almost year, in my considered view it is not in the interest of justice to detain him any

further. In view of the above facts and circumstances, the applicant is entitled for bail.

8. Under the circumstances, the application is allowed on the following terms and conditions.

- (i) The applicant shall be released on bail on furnishing P.R. bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one or two sureties in the like amount to the satisfaction of the Addl. Sessions Judge, Khed-Rajgurunagar.
- (ii) The applicant shall not tamper with the evidence or influence complainant and witnesses in any manner.
- (iii) The applicant shall not visit Osmanabad wherein the victim is residing till her evidence is recorded before the Sessions Court.
- (iv) The applicant shall not leave Pune District without prior permission of the Sessions Court till the completion of evidence of the victim.

(ANUJA PRABHUDESSAI, J.)