

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1043 OF 2017

Krushna s/o Raosaheb Dethe,
Age 22 years, Occu. Education,
R/o Parpudi, Taluka and District
Jalna

..Applicant

Versus

The State of Maharashtra,
through Police Station Officer,
Mukundwadi Police Station,
Taluka and District Aurangabad

..Respondent

Mr P.P. More, Advocate for applicant
Mr K.N. Lokhande, A.P.P. for respondent
Mr A.A. Mukhedkar, Advocate for complainant, assisting the A.P.P.

CORAM : N.W. SAMBRE, J.

DATE : 2nd March 2017

PER COURT

Heard.

2. Applicant is seeking pre-arrest bail In C.R. No.26/2017, registered at Mukundwadi Police Station, Aurangabad for offences punishable under Section 376 read with Section 34 of the Indian Penal Code, under Sections 4 and 12 of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POSCO Act' for brevity) and under Section 4 of the Dowry Prohibition Act.

3. The prosecution story, as could be gathered from the contents of the first information report and other material is that the present applicant came in contact with victim Pooja in 2012 when she was below eighteen years of age. The applicant then made promise of marriage to the victim, established physical relationship with her and

repeatedly continued the same till the date of lodging of first information report. As the applicant refused to marry with the complainant, she has lodged the first information report.

4. Amongst other, the ground which is pressed into service by the learned Counsel for the applicant is, the unexplained delay in lodging the first information report. Even if the custody of the applicant is granted, there is hardly any necessity for the same, as nothing is to be recovered from the applicant. According to him, perusal of the first information report would depict the consent by the complainant and it is only upon refusal to marry, the applicant is involved in a false offence. So as to substantiate his contention, he would invite attention of this Court to the judgments of this Court in the matter of **Akshay Manoj Jaisinghani Vs. The State of Maharashtra**, decided on 9th January 2017, **Mahesh Balkrishna Dandane Vs. State of Maharashtra**, reported in **2015 ALL M.R. (Cri.) 2805** and **Sunil Mahadev Patil Vs. State of Maharashtra**, reported in **2016 (3) Bom.C.R. (Cri.) 435**. Based on the aforesaid judgments, he would invite attention of this Court to the parameters which are considered for the purpose of dealing with an issue of bail in the eventuality that is narrated herein above, particularly for an offence of rape and also under the provisions of POSCO Act. He would then urge that since on the date of registration of crime, the age of the victim was above eighteen years, the provisions of POSCO Act will not be attracted. According to him, the applicant is very much available for investigation and as such, bail application needs to be allowed.

5. Per contra, learned Additional Public Prosecutor, who is assisted by learned Counsel for the complainant would submit that the applicant's custodial interrogation is necessary, as his criminal intention is apparent from his conduct, as could be inferred from the narrations in the first information report. He would also place reliance upon the medical report of the complainant, so as to substantiate that the likelihood of offence cannot be ruled out.

6. It is required to be noted from the contents of the first information report and other material that applicant continued to have physical relation with the complainant since 2012, i.e. when she was below eighteen years (minor). In view of these allegations, coupled with the fact that medical report depicts of the sexual intercourse, in my opinion, invoking of provisions of POSCO Act against the applicant is very much justified.

7. It is then to be noted that the applicant herein was given chance to cover his misdeeds, particularly offence under Section 376 of the Indian Penal Code. He was given an offer to marry with the victim, however, applicant as is apparent from the contents of the first information report refused to do so and as such, complainant was left with no other option but to lodge first information report. It is then to be noted that once there is prima facie allegation against the applicant of his involvement in the crime in question and there is substantial material available on record, particularly in the investigation papers connecting the applicant to the crime in question, in my opinion, the applicant in the present case is not entitled for bail.

It is also to be noted that sexual offences, particularly under the provisions of POSCO Act are required to be viewed seriously and the Court should be very slow in entertaining and granting pre-arrest bail in favour of accused persons.

8. In the aforesaid background, no case is made out for grant of pre-arrest bail. As such, Criminal Application stands rejected.

(N.W. SAMBRE, J.)

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