

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD  
CRIMINAL APPLICATION NO. 5504 of 2017.**

Bhimrao s/o Baliram Dhumak,  
Age 24 years, Occ. Agril. &  
Labour, R/o. Ghatwadi, Tq.  
Kaij, District Beed.

... Applicant.

VERSUS.

The State of Maharashtra,  
Through : Police Station  
Officer, Police Station  
Kaij, District Beed.

... Respondent.

...

Advocate for the Applicants : Mr. Eknath Sawant, H/f  
Mr. M.P. Kale Advocate.

APP for Respondent/State : Mr. S.Y. Mahajan.

**CORAM : V.L. ACHLIYA, J.**

**DATE : 30th November, 2017.**

**ORAL ORDER :**

1. The applicant has filed this application under section 439 of the Code of Criminal Procedure for release on bail for the offences punishable under section 363, 376(i) read with section 34 of the Indian Penal Code and under section 3 and 4 of the Protection of Children From Sexual Offences Act, registered vide Crime No. 260/2017 at Kaij Police Station, District

Beed.

2. Heard learned counsel for the applicant and learned A.P.P. for the State. Perused charge-sheet.

3. In short, it is the contention of the learned counsel for the applicant that investigation is concluded and charge-sheet is already filed. It is pointed out that initially the complaint was lodged on 27.05.2017 by the father of the prosecutrix which leads to registration of offence under section 363 of the Indian Penal Code vide Crime No. 260/2017, subsequent to recording of statement of prosecutrix offence under section 376(i) under section 3 and 4 of The Protection of Children From Sexual Offences Act came to be added during the course of investigation.

4. It is contended that there is no evidence in the nature of birth certificate of prosecutrix to show that at the time of incident the prosecutrix was minor. On the contrary the report of clinical examination of the prosecutrix shows that the prosecutrix was in the age group of 15 to 17 years. By referring the statement of prosecutrix learned counsel submits that it can be safely inferred that the prosecutrix has given-up the custody of her father on her own accord. The accused

has neither induced her nor coerced to give up custody of her parents and accompany him. In the background of facts and circumstances of the case, it is contended that, it can safely be inferred that because of the affair between prosecutrix and applicant she had given up custody of her father and physical relationship in between them was consensual. It is contended that, it will take long time to proceed with the trial. The applicant is ready and willing to abide by any conditions that may be imposed which includes not to enter the village where the prosecutrix is residing, in the event of release of applicant on bail.

5. On the other hand learned APP opposed the application with contention that there is strong prima-facie case to connect the applicant with the commission of offence. It is contended that, the prosecutrix was minor at the time of commission of the offence. As per the facts stated in the complaint, the prosecutrix was 14 years and 11 months old at the time of incident. He submits that, in view of the fact that the prosecutrix being minor, her consent is immaterial. It is further contended that if the applicant is released on bail, there is every likelihood that applicant may pressurize the prosecutrix and witnesses not to depose against

him. He therefore, urged to reject the application.

6. In order to appreciate the submissions advanced I have perused the charge-sheet and also considered the order passed by the Special Judge, Ambajogai. On due consideration of the submissions advanced in the light of facts and circumstances of the case, I am of the view that the case is made out to entertain the application. It is nowhere stated that at the time of incident prosecutrix was 14 years and 11 months old. No documentary evidence has been collected as to birth date of the prosecutrix. As per the clinical examination conducted to determine the age of the prosecutrix it was found that prosecutrix was in the age group of 15 to 17 years. On perusal of the report of medical examination, particularly as per vagina examination it reveals that, the medical officer has not recorded any finding in respect of position of hymen. Although it is observed that possibility of sexual intercourse could not be ruled out, but there is no basis to support such opinion. At least on the basis of examination of hymen, the medical officer could have formed an opinion as to whether the prosecutrix was subjected to sexual intercourse. In absence of any observation regarding the position of hymen, there is

no basis to record such opinion. Except the history of prosecutrix, there is nothing in the form of medical examination to support the case of prosecution.

7. It will take long time to proceed with the trial. It is no where the case of the prosecution that applicant is carrying criminal antecedents. Only apprehension expressed that in case the applicant is released on bail there is likelihood that he will pressurize the prosecutrix and other witnesses. I am therefore inclined to allow the application subject to certain conditions.

8. It is clarified that the observations as made above are made for limited purpose of deciding the present application seeking bail. Same shall not be treated as observations made as to merits of the case of prosecution against the accused. Hence the following order.

#### **ORDER**

1. Application is allowed.
2. Applicant be released on bail in connection with Crime No. 260/2017 registered at Kaij Police Station, District Beed, for the offences punishable under

sections 363, 376(i) read with section 34 of the Indian Penal Code and under section 3 and 4 of The Protection of Children From Sexual Offences Act, on his furnishing bail in the sum of Rs. 40,000/- with one surety in the like amount, on following conditions.

- (i) Pending disposal of trial the applicant shall appear and record his presence before the officer in-charge of police station Kaij, District Beed, on last day of each month in between 1 p.m. to 2 p.m. to record his presence till conclusion of trial.
- (ii) During pendency of trial except for the purpose of attending Court proceeding and appearance before officer in-charge of the police station in terms of conditions of bail the applicant shall not enter into local limits of District Beed without prior permission from trial Court.
- (iii) Pending disposal of case against him the applicant shall not contact the prosecutrix and the prosecution witnesses and indulged into any act amounting to pressurizing and tampering the prosecution witnesses.
- (iv) Applicant shall furnish names and addresses of their three close relatives with phone numbers.

3. In the event of breach of any of the conditions

of bail, the bail granted to applicant liable to be cancelled.

4. Bail to be furnished in the Trial Court.

5. Learned Judge of the Trial Court is directed to expedite the hearing of the case.

9. Criminal application stands disposed of in above terms.

**(V.L.ACHLIYA, J.)**

mkd/-