

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 824 OF 2017**

Akash alias Kanhya Balu Kamble

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Satyavrat Joshi for the Applicant

Mr. Deepak Thakare, A.P.P for the Respondent-State

Police Constable Mr. R. S. Bhosale from Kondhwa Police Station, Pune City, is present

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 18th APRIL, 2017

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P for the State.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 371 of 2016 registered with the Kondhwa Police Station, Pune City, for the alleged offences punishable under Sections 363, 366A, 376 of the Indian Penal Code and Sections 4 and 8 of the Protection of Children from Sexual Offences Act.

3. Learned Counsel for the applicant states that the applicant aged 19 years and the prosecutrix aged about 15 years were in love with each other and that the prosecutrix had run away with the applicant. He relied on the opinion of the doctor of the Sassoon General Hospital, Pune.

4. Perused the papers. According to the prosecutrix, she was 15 years at the relevant time and the applicant 19. She has stated that three years prior thereto, she knew the applicant as he was her brother's friend. She has stated that her family was against the relationship and had reprimanded her on various occasions and had also confined her at home. She has further stated that the applicant had expressed his love for her and had even given her a mobile, so that, she was able to call the applicant. She has stated that she met the applicant on 4th September, 2016 after telling her parents that she was going to her friend's house. She has further stated that at about 8:30 p.m., she left her home and met the applicant near his house, that they spent the night under a tree near the hill, behind Itcon Mandir. She has stated that on 5th September, 2016, they left for Beed and stayed in a Mandir till 6th September, 2016. She has stated that the applicant and she got married in a Temple and thereafter they stayed in a hut till 14th

September, 2016. According to her, on 14th September, 2016, the applicant had physical relations with her. She has further stated that thereafter her family members came to Beed, pursuant to which, she was brought to the Police Station. The medical certificate of the prosecutrix is at page 43. The prosecutrix has given the history to the doctor. The said history is consistent with her statement. The opinion given by the Doctor is as under :

“Impression : from history and clinical examination, there is no evidence of any penetrative vaginal sexual intercourse with no evidence of inflammation and injuries on any part of the body.”

5. It appears to be a case of consent. However, considering that the prosecutrix was a minor, consent is immaterial. The applicant was 19 years of age at the relevant time and the prosecutrix about 15. The investigation is complete and charge-sheet is filed. Considering the aforesaid, the application is allowed and the applicant is be enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 10,000/- with one or two sureties in the like amount;

(ii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iii) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(iv) The applicant to cooperate with the conduct of the trial.

6. The application is allowed in the aforesaid terms and is accordingly disposed of.

7. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

8. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.