

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1054 OF 2016

Mukesh Bhawarlal Borana. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Nitin Sejpal, advocate for Applicant.

Ms. P.P. Shinde, APP for State.

CORAM : SMT. SADHANA S. JADHAV, J

DATE : FEBRUARY 16, 2017

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested in Crime No. 304 of 2015 registered at Bhoiwada Police station for offence punishable under section 363, 366, 366A, 376(2)(i) of the Indian Penal Code and

Sections 4, 8 of Protection of Children from Sexual Offenses Act, 2012.

3 It is the case of the prosecution that on 10/9/2015 Sajjansingh Vidyasingh Chundavad lodged a report at the police station that he is the father of two daughters. Since the elder daughter Ms. X had failed in her Secondary School Certificate Examination, her education was discontinued. His younger daughter X-1 was studying in 10th standard. She had failed in first attempt and she had filled up form for October term. According to the complainant, his daughters are learning tailoring in social service society tailoring institute. That on 3/9/2015 the father had paid fees. On 9/9/2015 they had left the house for attending the classes but had not returned home till 7 p.m. Parents had searched for them. That they were not found and therefore, they were constrained to approach the police station. He suspected that they have been abducted by some unknown person. On the basis of the report, Crime No. 304 of 2015 is registered under section 363 of the Indian Penal Code.

4 Both the girls were found within the jurisdiction of Pali Police Station. In the course of enquiry, statement of both the victims were recorded.

5 Ms. X had informed the police that she had met the present applicant when she had been to Kalakendra. She had contacted the present applicant. They were in love with each other. On 9/9/2015 she left the house alongwith her sister Ms. X-1 to attend tailoring classes. But instead of attending classes, they had gone to Dadar railway station. From there they had been to Boriwali and Bandra. When they were at Boriwali Police Station, Ms. X had called upon the present applicant and they all went to Bandra. In the afternoon at about 3.10 p.m. they had left for Pali(State of Rajasthan). Her sister had also contacted her friend. Mahavir. He had also joined them. From there they went to Jodhpur. From Jodhpur they went to Jaipur. At Jaipur Ms. X got married with the applicant and Ms. X-1 with Mahavir by exchanging garlands. Ms. X-1 had been alongwith

Mahavir to Pali and Ms. X left alongwith the present applicant. They reached Taktagad. They went to police station at Taktagad and informed to the police that they had got married. The police contacted the first informant on his cell phone. Thereafter, the girls were taken into custody.

6 Ms. X-1 was found at Pali. When Ms. X-1 was apprehended at Pali, her statement was recorded in question and answer form. She also reiterated the narration of her elder sister. She had disclosed to the police that Ms. X was in love with the present applicant. They all have decided to go to Rajasthan. They had called upon the present applicant. Ms. X-1 was found at Pali. The father of Mahavir (juvenile in conflict in law) had not accepted them. Ms. X-1 has stated that she had no sexual intercourse with Mahavir.

7 The learned Counsel for the applicant submits that the girls had attained the age of understanding. Instead of going to attend tailoring classes, they had voluntarily called upon the present

applicant. Ms. X-1 had called her friend Mahavir(juvenile in conflict with law) and they had voluntarily left Bombay in the company of the present applicant and Mahavir and therefore, the applicant deserves to be enlarged on bail.

8 As against this the learned APP submits that the statement of the victim was recorded under Section 164 of the Code of Criminal Procedure, 1973 and they have stated before the learned Magistrate that the present applicant had abducted them on the point of knife. He had forced them to travel with him. He had threatened them of dire consequences and had sexual intercourse with Ms. X.

9 It is pertinent to note that the statement under section 164 of the Code of Criminal Procedure, 1973 did not find place in the compilation of the charge-sheet. The statement recorded under section 161 and 164 of the Code of Criminal Procedure, 1973 are inconsistent. The Court cannot be oblivious of the fact that Ms. X alongwith the present applicant had voluntarily gone to Taktagad

Police station and informed the police that they had married in a temple and that she had withdrawn herself from the custody of her parents and had called upon the applicant and got married to him. It is only after the investigation is completed that the girls have changed their stories. The statement under section 164 of Code of Criminal Procedure, 1973 is recorded on 6/10/2016.

10 In any case, investigation is completed and charge-sheet is filed. In the peculiar facts and circumstances of the case, the applicant deserves to be enlarged on bail.

11 The above observations are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be considered at the time of trial.

12 Hence, following order is passed.

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or more local solvent sureties in the like amount.
- (iii) The applicant shall not enter into the jurisdiction of Bhoiwada Police Station till the conclusion of the trial and shall not leave Mumbai, Thane and Palghar till conclusion of the trial.
- (iv) The applicant shall not tamper with the evidence.

(SMT. SADHANA S. JADHAV, J)