

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPTORY BAIL APPLICATION NO. 1014 OF 2017**

Kaluram Krishna Jagtap

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Kuldeep Patil i/b Mr. Prashant Subhash Hagare for the Applicant

Ms. S. S. Kaushik, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 16th JUNE, 2017

P.C.

1. Heard learned Counsel for the applicant.
2. By this application, the applicant seeks pre-arrest bail in connection with C.R. No. 319 of 2017 registered with the Yawat Police Station, Pune, for the alleged offences punishable under Sections 376, 506 of the Indian Penal Code and Sections 8 and 12 of the Protection of Children from Sexual Offences Act.
3. Learned Counsel for the applicant submitted that it is a case of consent. He further submitted that the complainant/prosecutrix, on her own

accord, had accompanied the applicant to various places and that the same is evident from the FIR. He submits that although some of the allegations pertaining to sexual assault are prior to attaining the age of majority, however, the complainant was on the verge of attaining majority.

4. Learned A.P.P opposed the application. She has tendered the papers of investigation and has relied on the statement of her father as well as the medical record.

5. Perused the papers. The applicant was around 17 years of age at the time of the alleged incident, whereas, the applicant aged 36 years, was a married man with two children. The applicant is related to the complainant, inasmuch as, he is the applicant's cousin's brother-in-law. The prosecutrix in detail has given the manner in which the applicant met her, thereafter, followed her and started frequenting her residence. The first incident of sexual assault is stated to have taken place on 27th March, 2016. She has alleged that the applicant told her that his mother was not feeling well and wanted to take her to meet her. She has alleged that instead of taking her to meet his mother, the applicant took her to a lodge at Morgaon

Village and sexually assaulted her and threatened to kill her, if she disclosed the said incident to her father or any other person. She has further alleged that when she came to Pune for education, the applicant took her to various places and committed forcible sexual intercourse with her. A perusal of the statement of the prosecutrix's father, shows that he has corroborated what has been disclosed by the prosecutrix and has further disclosed that his daughter (prosecutrix) had told him that the applicant was trying to meet her and that he had taken a clip of her taking bath and that he was blackmailing her that he would show the said clip to everyone. He has stated that when he learnt of the same, considering that the allegations were serious and that the family would be defamed and taking into consideration their daughter's future, he disclosed the incident to two persons who made the applicant execute a bond that he would henceforth not trouble the prosecutrix. It appears that a bond dated 3rd April, 2017 was executed by the applicant.

6. A perusal of the medical papers show that the prosecutrix has given the same history to the doctor. From the history of clinical examination, the doctor has opined that there is evidence of vaginal

penetration because of sexual intercourse. Admittedly, the prosecutrix was below 18 years at the time of the first incident. In view of the same, consent was immaterial. Even otherwise, the facts reveal that the applicant has misused and abused his position and relation and had taken advantage of the prosecutrix. Considering the aforesaid, this is not a fit case to grant pre-arrest bail to the applicant. Application is accordingly rejected.

7. It is made clear that the observations made herein are *prima facie*, for the purpose of deciding this application. If an application for regular bail is filed, the same shall be decided on its own merits, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.