

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE SIDE JURISDICTION  
CRIMINAL BAIL APPLICATION NO. 1411 OF 2016

Salman Habib Khan

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Vinay Kumar Omprakash Dubey Advocate for Applicant.

Mr. Arfan Sait APP for the State.

**CORAM : SMT. SADHANA S. JADHAV, J.**

**DATED : 12<sup>th</sup> JANUARY, 2017.**

**PC :**

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 10/02/2016 in crime no. 32 of 2016 registered at Boisar Police Station for offence punishable under sections 376 (2) (I) of the Indian Penal Code and Section 3 & 4 of the Protection of Children from Sexual Offences Act, 2012.

2) It is the case of the prosecution that on 02/02/2016, the victim Ms. 'X' had not returned home from school. Her parents had searched for her and thereafter on the basis of reliable information, the father of the victim has lodged a report at the police station alleging therein that when he went to the

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house of the applicant his father had informed that the victim girl has eloped along with his son. They had kept the cellphone number of the applicant on track. Thereafter, the father of the applicant was also searching for him and had learnt that applicant along with the victim is at Chennai. They had been to Chennai and from there, the father of the applicant had brought the applicant and victim to Mumbai. On the basis of the report, initially offence was registered under section 363 of the Indian Penal Code. After recording the statement of the victim section 376 (2) (I) of the Indian Penal Code was added since the victim was a minor.

3) Perused the papers of investigation, more particularly the statement of the victim recorded under section 164 of the Code of Criminal Procedure, 1973. She has disclosed before the Magistrate that the applicant herein had expressed his love for her. He had also threatened her that in the eventuality she turned down the proposal, he would commit suicide. On 09/11/2015, he had actually consumed some poison. Thereafter, applicant is alleged to have insisted upon the victim to accept the proposal. He had also disclosed to her that since they belonged to the different religions, the families would not agree to their marriage and hence, they had decided to elope and accordingly

eloped on 02/02/2016. They went to Chennai and resided with the grandmother of the applicant. Thereafter, the father of the applicant had traced them down and had brought them to the police station. It is pertinent to note that on 12/02/2016, PSI of Boisar Police Station had also recorded the statement of the applicant. He had specifically informed the police that he was acquainted with the victim for more than 6 months. Her parents had learnt about their intimacy and had threatened her that she shall not talk with the applicant. That in the month of January, the victim had called the applicant near hotel Sarovar. She had shown him the injury sustained by her and had informed him that she was being assaulted by her family members since they had learnt about their love affair. She insisted upon him to take her away and that they would get married after she attains majority. He has also stated that she had threatened that she would cause harm to herself in the eventuality that he does not take her away. Thereafter, they both had eloped. They had sold her golden ear rings for Rs. 7,000/- and had proceeded to Chennai.

4) The victim as well as the applicant have stated that both had forced love upon each other and therefore, the incident had taken place and that they had eloped together. The victim had also disclosed to the doctor that she had

voluntarily eloped along with the present applicant and only because they belonged to two different religions, family members were against them. It is true that the victim was a minor but it appears from the papers of investigation that she had attained the age of understanding and had voluntarily withdrawn herself from the custody of her parents. Applicant has been in custody for more than 1 year and therefore, he deserves to be released on bail. However, it is made clear that The learned Special Court shall not be influenced by the observations made herein above as they are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 after filing of the charge-sheet.

### **ORDER**

- (i) Application is allowed.
- (ii) 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) Applicant shall furnish his permanent residential address, cellphone number, landline no etc to the Investigating Officer. Applicant shall not reside in Boisar till the conclusion of the trial.
- (iv) Applicant shall not contact the victim or her parents in any manner.

- (v) Applicant shall report to the local police station wherever he resides, on first Sunday of each month, till the framing of charge.
- (vi) Application stands disposed of.

**(SMT. SADHANA S. JADHAV, J.)**