

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1486 OF 2016

Ganesh Raju Bhosale

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Dhiraj B. Bansode Advocate for Applicant.

Ms. J. S. Lohkare APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 4th JANUARY, 2017.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 10/07/2015 in crime no. 224 of 2015 registered at Vitthalwadi Police Station for offence punishable under sections 363, 366 (a), 376 (2) (j) (2) (n) of the Indian Penal Code and Sections 3, 4, 5 (1) and 6 of Protection of Children from Sexual Offences Act, 2012. Investigation is completed and charge-sheet is filed.

2) It is the case of the prosecution that applicant and the victim Ms. 'X' are residing in the same locality. That on 03/07/2015, Manoj Jha lodged a report at the police station alleging therein that he has two daughters namely Arti &

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Ms. 'X'. That his younger daughter had gone to attend tailoring class on 23/06/2015 and had not returned home. They searched for her. Her whereabouts were not known and hence, he was constrained to approach the police station. However, he had specifically submitted that his minor daughter has been abducted by some unknown person. On the basis of his report, crime no. 224 of 2015 is registered at Vitthalwadi Police Station for offence punishable under section 363 of the Indian Penal Code. The police of Vitthalwadi Police Station had reached the house of the sister of the applicant at Ambernath as they had reliable information that the victim was in the house of the sister of the applicant. The victim was found in the said house. She was brought before the police and her statement was recorded on 10/07/2015.

3) The victim had disclosed to the police that she was acquainted with the present applicant. According to her on 02/06/2015, she was standing outside her house. Applicant was passing by the road. Her mother had suspected that she was talking with the applicant and that there was a quarrel between the victim and her mother. Victim had left the house on 03/06/2015. She whiled away some time at Ulhasnagar sky walk and thereafter, she had called upon present applicant and insisted upon him to take her to his house. According to

her, applicant was of the opinion that she should return to her own house. She had refused to go back to her house and threatened the applicant that she would commit suicide by jumping on the railway track in the eventuality that he does not take her along with him and hence, the applicant had taken her to the house of his sister. She has categorically stated that while she was residing with the sister of the applicant he had not met her and had no sexual relations with her. She had insisted upon her parents not to file a report against the applicant as she had voluntarily withdrawn herself from the safe custody of her parents. According to the victim, one day applicant had approached her and had expressed his love for her. She had denied his solicitations. According to her, he had threatened her that he would expose her to social obloquy in the eventuality that she would not succumb to his love. She has further stated that on 23/06/2015, she had left the house on her own accord. She met the applicant. According to her, he had induced her to elope with him and had threatened her of dire consequences and therefore, she had left the house in the company of the applicant. They had been to Ambernath. From there, they went to Karjat and then Lonavala. They had been to Dehu. She has further disclosed that the applicant had sought a job with a mason. The said

mason had permitted them to live in the building which was under construction. Applicant had started working as mason and they had started residing in a room. They lived in the said room for 15 days i.e. till 09/07/2015. At that time, it is alleged that the applicant had sexual relations with her. They had then learnt that a missing report is lodged at Vitthalwadi Police Station and therefore, they had come to Vitthalwadi Police Station. Thereafter, she had returned to her own house.

4) The learned counsel for the applicant submits that in fact, there was love relationship between the victim and the applicant and therefore, applicant deserves to be enlarged on bail. It is submitted that the applicant is only 21 years old.

5) Upon perusal of the statement of the victim, it is clear that in the earlier incident i.e. on 03/06/2015, she had reposed faith in the applicant. At that stage, applicant had not taken any undue advantage of the fact that the victim had left the house on her own accord. According to her, she had specifically asked her parents not to lodge a report against the applicant. It is further seen that subsequently young boy and girl had eloped. The victim had stayed with the applicant from 24/06/2015 to 09/07/2015 and at that time, she had not

expressed any grievance against the applicant. It is further seen that the applicant was in search of a job and had actually started working as mason only to support the victim and himself.

6) It is in these circumstances that the applicant deserves to be enlarged on bail as the victim had attained an age of understanding.

7) The learned APP submits that the consent of the victim cannot be taken into consideration as she is a minor. But on perusal of the statement of the victim, it appears that she had attained the age of understanding and hence, applicant deserves to be enlarged on bail. However, it is made clear that observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 15,000/- with one or more sureties in the like amount.
- (iii) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)