

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1906 OF 2017

GANESH DASHRATH BARKHADE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Anand S. Pandey, Advocate for the Applicant.

Mr.R.M.Pethe, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 15th NOVEMBER 2017

P.C. :

1 The applicant/accused in POCSO Special Case No.643 of 2015 arising out of Crime No.125 of 2015 for offences punishable under Sections 363, 366 and 376 of the Indian Penal Code (IPC) and under Section 4 and 8 of the Protection of Children from Sexual Offences Act (POCSO Act), by this application, is seeking his release on bail after filing of the charge-sheet.

2 Heard the learned advocate appearing for the applicant/accused. By pointing out the statement of the alleged victim of the crime in question and the certificate of her date of birth, the learned advocate argued that at the time of the alleged incident, the alleged victim girl was more than 16 years of age and therefore, in the light of the order dated 30th September 2014 passed by this court in the matter of **Satyam Ramchandra Fulore vs. The State of Maharashtra**¹ (Coram : Sadhana S. Jadhav, J.) as well as the order in the matter of **Sunil Patil vs. State of Maharashtra**² the applicant/accused deserves enlargement on bail during pendency of the trial.

3 The learned APP opposed the application by contending that the applicant/accused has indulged in penetrative sexual assault of a female child and therefore, he cannot be released on bail in the wake of his criminal history as well as the fact that he was extorted by resorting to the provisions of Maharashtra Police Act.

1 Criminal Bail Application No.1953 of 2014

2 2016 ALL MR (Cri) 1710

4 I have carefully considered the rival submissions and also perused the entire charge-sheet. The charge-sheet itself shows that on the date of the alleged incident, the alleged victim was more than 16 years of age. Her father had reported to police on 19th May 2015 that she is missing from the house.

5 Statement of the alleged female child is recorded by the Investigator on 25th July 2015. She has disclosed to the Investigator that she had love affair with the present applicant/accused right from the year 2014. She was continuously talking with the applicant/accused. The alleged victim of the crime in question further stated to police that she came to know that the applicant/accused was lodged in jail in past and on return she asked the applicant/accused as to what had happened, to which the applicant/accused confessed that he had indulged in half murder. The victim further reported to the Investigator that their affair continued thereafter and then she eloped with the present applicant/accused, married him in the temple, resided with him initially at Kopri and subsequently at

Borivali, by renting a room and staying as a couple. Ultimately, she was called by the police.

6 In the matter of **Satyam Fulore (supra)** relied by the present applicant/accused, the alleged victim of the crime was 16 years old female child who was intending to marry the applicant/accused therein. With a reason that the girl was in love with the applicant/accused therein, this court, vide order dated 30th September 2014, was pleased to release the applicant/accused therein, on bail. In the matter of **Sunil Patil (supra)** in paragraph 12, this court has given guidelines while considering the case of a boy and a minor girl in love. The applicant/accused in this case had not used force for kidnapping the alleged victim of the crime in question nor suppressed the fact that he was in jail in past.

7 In this view of the matter, the alleged criminal history of the applicant/accused pales into insignificance. That can be taken care of by imposing necessary conditions. In the result, the following order :

ORDER

- i) The application is allowed.
- ii) The applicant/accused in Crime No.125 of 2015 for offences punishable under Sections 363, 366 and 376 of the Indian Penal Code (IPC) and under Section 4 and 8 of the Protection of Children from Sexual Offences Act (POCSO Act) is ordered to be released on bail on his executing P.R.Bond in the sum of Rs.15,000/-, and on furnishing surety in like amount.
- iii) The applicant / accused shall not tamper with prosecution evidence.
- iv) The applicant / accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the court or to the Police Officer.
- v) The application is accordingly disposed of.

(A. M. BADAR, J.)