

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2392 OF 2017

NIKHIL AJAY MEHER)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.Sandeep Sherkhane, Advocate for the Applicant.

Mr.A.D.Kamkhedkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 2nd NOVEMBER 2017

P.C. :

1 The applicant / accused in Crime No.439 of 2017 registered with Police Station Santacruz, Mumbai, for offences punishable under Sections 363, 366, 376 of the Indian Penal Code (IPC) and under Sections 4 and 8 of the Protection of Children from Sexual Offences Act (POCSO Act), by this application, is seeking his release on bail.

2 Heard the learned advocate appearing for the applicant / accused. He argued that the applicant is a student and the alleged victim of crime in question, is also a student. They were having love relation and the applicant / accused was called to join the company of the victim, by the victim herself.

3 The learned APP opposed the application by contending that the offence in question is against a minor female child and therefore, considering the nature of evidence, the applicant /accused is not entitled for bail.

4 I have carefully considered the rival submissions and also perused the case diary. On 4th September 2017, father of the minor female victim lodged First Information Report (FIR) alleging that his daughter left the house on 2nd September 2017 and did not return home. Papers of investigation show that the minor female victim had returned home on 4th September 2017 itself. Her statement goes to show that she was in love with the present applicant / accused while she was studying in 11th

Standard at M.M.College. It is seen from her statement that she herself had called the applicant / accused to join her company and thereafter accompanied him to house of his relatives. As per version of the minor female victim, in March 2017, the applicant /accused had committed sexual intercourse on her on the pretext of marrying her.

5 The investigation of the crime in question is virtually over. It is seen from papers of investigation the minor female victim, who was taking education in 11th Standard was deeply in love with the present applicant / accused and she herself had called the applicant / accused by making telephonic contact with him on 2nd September 2017 to join his company. In the matter of **Sunil Mahadev Patil vs. State of Maharashtra**¹ in paragraph 12, this court has laid down guidelines in a case where a boy and a minor girl in love chose to live together without consent of their parents, which are required to be considered while releasing the applicant / accused on bail, in such cases. It reads thus :

1 2016 ALL MR (Cri) 1710

“12 When a boy and a minor girl are in love with each other and chose to live together without consent of their parents, then the following factors are to be considered:

- (i) What is the age of the prosecutrix, who is minor.
- (ii) Whether the act is violent or not.
- (iii) Whether there are antecedents or not.
- (iv) Whether the offender is capable of repeating the Act or not.
- (v) Whether there is likelihood of threats or intimidation, if at all the boy is released.
- (vi) Whether any chance of tampering with the material witnesses when their statements are recorded.

It is also to be taken into account in such cases that a boy in his early 20's deserves to get employment and to plan, stabilize and secure his future.”

6 In the case in hand, it is seen that the applicant / accused had not indulged in violence and the minor female victim had herself called him for joining his company. The applicant / accused is not having any criminal antecedents. He is young student. In this view of the matter, the following order :

ORDER

- i) The application is allowed.
- ii) The applicant / accused in Crime No.439 of 2017 registered with Police Station Santacruz, Mumbai, for offences punishable under Sections 363, 366, 376 of the IPC and under Sections 4 and 8 of the 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 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 applicant / accused should not contact the minor female victim or her relatives in any manner.
- vi) The application is disposed of.

7 At this stage, the learned advocate for the applicant / accused submits that initially for a period of three weeks, the applicant / accused be released on cash security in order to enable

him to arrange for surety. The request, so made, is reasonable. Initially, for a period of three weeks, the applicant / accused be released on cash security of Rs.15,000/-, apart from P.R.Bond of Rs.15,000/-.

(A. M. BADAR, J.)