

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**ANTICIPATORY BAIL APPLICATION NO.2123 OF 2016**

Vicky @ Vivek Subhash Aatkari .... Applicant

versus

State of Maharashtra ... Respondent

Ms.Manisha A. Devkar, Advocate for the Applicant.

Mr.Sooraj S. Hulke, APP for the State/Respondent.

**CORAM : MRS.MRIDULA BHATKAR, J.  
DATE : 25<sup>th</sup> JANUARY, 2017.**

**P.C. :**

1. This application is moved for pre-arrest bail by the applicant/accused. The applicant/accused is prosecuted for the offences punishable under section 376, 506 of the Indian Penal Code and under section 4 and 6 of POCSO, 2012 in C.R.No.175/16 of Vaduj Police Station.
2. The father of the prosecutrix gave complaint to the police on 05/08/2016. The prosecutrix is 14 years old. In the year 2015 she was studying in 8<sup>th</sup> standard at Rajewadi, Taluka

Atpadi, District – Sangli. The family of complainant is resident of village Taraswadi. In Diwali holidays the prosecutrix alongwith her sister visited her parent's house, stayed there for a few days and thereafter she alongwith her sister went to Rajewadi for her school. On 20/03/2016 sister-in-law of the complainant i.e. the maternal aunt of the prosecutrix informed him that the prosecutrix appears to be pregnant and therefore she took her for medical check up. At that time, doctor confirmed her pregnancy and then the father and the maternal aunt when questioned the prosecutrix, she disclosed that during Diwali vacation the applicant/accused had also come to Taraswadi for vacation on 15/11/2015 and thereafter for four days he had forcible sexual intercourse with the prosecutrix. He threatened her to life if she disclosed this incident to anybody.

3.           Thereafter in the month of March the family wanted to terminate the pregnancy. However, the doctor refused to terminate her pregnancy because the foetus was more than 26 weeks old. Thereafter the family had to shift the pregnant minor

daughter to Satara as they wanted to save face from the society. On 20/06/2016 the prosecutrix delivered a baby boy and thereafter the child was abandoned in one centre and then again after staying one month outside, they all returned to their native place at Taraswadi in July 2016. Thereafter in the month of August the father gave information to police pursuant to which the offence was registered at C.R.No.175/16 against the applicant/accused. Hence this pre-arrest bail application is preferred.

4. The learned counsel for the applicant/accused submitted that the dates of sexual intercourse given in the complaint are wrong. It is further submitted that in so far as the facts are concerned, there is variance in the complaint. She further submitted that the applicant/accused is innocent. The prosecutrix has falsely taken his name and falsely involved him in this offence. She submitted that true culprit is the other person.

5. The learned prosecutor opposed this bail application and submitted that the girl was minor when the incident took place.

6. The fact, that the girl was 14 years old at the time of the incident, is not disputed. Whether there was other culprit or this accused, is the matter of investigation. However, at this stage, after going through the contents of the complaint, the name of the applicant/accused is specifically taken and the specific role of forcible intercourse for four days is mentioned in the complaint. The prosecutrix could not go for medical termination as unfortunately she was late and the poor girl had to go through ordeal of unwanted motherhood when she was unmarried and minor. Considering the gravity of the offence, the custody of the applicant/accused is required for DNA test to fix the paternity. Under such circumstances, I am not inclined to grant pre-arrest bail. Hence the application for pre-arrest bail is rejected.

**(MRIDULA BHATKAR, J.)**