

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

BAIL APPLICATION NO. 2795 OF 2017

Akshay Barku Modhe.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Sachin H. Deokar, advocate for Applicant.

Ms. Anamika Malhotra, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : DECEMBER 20, 2017**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 9/2/2017 in Crime No. 221 of 2016 registered at Junnar Police Station, for offence punishable under section 363, 366 and 376 read with section

34 of the Indian Penal Code and section 4, 8, 12 of the Protection of Children from Sexual Offences Act, 2012.

3 It is the case of the prosecution that on 3/12/2016 Vasant had lodged a report at the police station alleging therein that on 2/12/2016 his nephew Mahesh Kewale had left the house to go to Narayangaon. Two daughters of the complainant were found missing and they could not be traced in the nearby vicinity or with the relatives. The complainant had enquired with his nephew as to whether his both the daughters are in his company and Mahesh had denied the same. Hence, offence on the basis of the report was registered under section 363 of the Indian Penal Code.

4 In the course of investigation, the missing girls were found on 9/2/2017 at Kolwadi, Taluka Niphad. Their statements were recorded. They had disclosed to the police that Sayali was in love with the present applicant and since there was opposition from the house, they both had decided to elope. Accordingly, they had

travelled from one place to another and had resided together. According to her, when they were at Kolwadi, they were working as agricultural labour. It is also alleged that the present applicant had physical relation with her against her will.

5 The age of the victim is 17 years old and it prima facie appears that she had voluntarily withdrawn herself from lawful custody of her parents and had accompanied the present applicant and resided with him.

6 The learned Counsel for the applicant submits that accused Mahesh Kewale has been enlarged on bail by this Court (Coram : A.S. Gadkari, J) vide order dated 10/11/2017.

7 On perusal of the papers of investigation, it appears that the girls had disclosed to the people at Niphad that they were married. In the facts of the case, the applicant deserves to be enlarged on bail.

8 However, it is made clear that the observations made hereinabove are prima facie in nature and restricted to the application under section 439 of the Code of Criminal Procedure, 1973. The trial Court shall not be influenced by the above observations at the time of hearing of application for discharge or quashing of FIR or at the time of trial. The same be heard on its own merits.

9 Hence, following order is passed :

ORDER

- (i) The application is allowed.

- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.

- (iii) The applicant shall not tamper with the evidence.

10 The Application stands disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)