

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

CRIMINAL BAIL APPLICATION NO.2853 OF 2017

Vaibhav Ajinath Gaikwad
vs.
The State of Maharashtra

..Applicant

...Respondent

Mr. Nakul Vare i/b Mr. Sharad T. Bhosale for the Applicant.
Ms. S. S. Kaushik, APP for the Respondent .

**CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 18th December, 2017**

P.C.:

. Heard. Learned APP waives service. Learned counsel for the Applicant has placed on record a copy of the charge-sheet.

2. This is an application under section 439 of Cr.P.C. The Applicant herein is arrested on 23/8/2017 in Crime No.219/2017 registered at Mangalweda Police Station for the offences punishable under sections 363, 366(A) and 376 of Indian Penal Code.

3. Initially, the First Information Report was lodged for the offence punishable under section 363 of IPC. However, the charge-sheet is filed for the offence punishable under sections 363, 366 and 376 of the IPC. It is the case of the prosecution that on 22/5/2017 Sanjay Trimbak Pawar lodged report at the Police Station alleging therein that the victim happens to be his daughter. She was 17 years and 2 months old and was studying in 12 Standard. It is alleged that on 18/5/2017 his daughter had left the house for tuition and did not return. On 19/5/2017 the First Informant had lodged a missing report and at that time had disclosed that his daughter is

18 years and 3 months. However after verifying her secondary school certificate, examination mark list her date of birth is 23/3/2000. It is alleged that he had suspected that the present Applicant had abducted her. On the basis of the said report Crime No.219/2017 was registered for the offence punishable under section 363 of IPC.

4. During the course of investigation on 23/8/2017 the victim had disclosed to the police that the present Applicant was her distant relative and he was engaged by her father as a driver of the tractor. They had come in contact with each other and she had disclosed to her parents that she was in love with the present Applicant. That her father did not approve the marriage between the present Applicant and his daughter and therefore was looking out for proposal. By end of February she had called upon the present Applicant and they had decided to elope. Her father had learnt about the same and convinced her that once she attains majority he would perform her marriage with the Applicant and under the said pretext he had taken his daughter home. Thereafter her father had got her engaged to one Vilas. Thereafter she had called upon the Applicant and had informed that they should elope and that if he does not co-operate she would commit suicide. On 18/5/2017 they had eloped together. They had taken shelter at the house of friends and relatives. They had resided at various places such as Akkalkot, Gangapur, Tuljapur, Shirdi etc. Finally they had exhausted all the funds which the Applicant had carried with him and they were at the ST stand where they were apprehended by the police. She has specifically stated that she had eloped on a condition that they shall not have any physical relations till they get married and that the Applicant had abided by the said word.

5. It is in these circumstances that it cannot be said that the Applicant had taken undue advantage of her love for him. In the facts of

the case, this Court is of the opinion that further incarceration of the Applicant would be unwarranted and unjustifiable. The victim is on the verge of attaining majority. That the parents had forced her to get married to a third person although she had made it clear that she was in love with the present Applicant.

6. The observations made hereinabove are prima facie in nature and shall not be considered for quashing of FIR, discharge application or at the time of trial as they are restricted only to an application under section 439 of the Code of Criminal Procedure. Hence, the order:

ORDER

1. 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.
2. Applicant shall not tamper with the evidence.
Application is allowed in the aforesaid terms and stands disposed of.

(SADHANA S. JADHAV, J.)