

**CRIMINAL APPLICATION NO.6 OF 2018
WITH
CRIMINAL APPLICATION NO.798 OF 2017**

Mohan Bhiku Rajpure	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

.....
Mr.Yashpal M.Thakur, Appointed Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent/State.

CORAM : A.M.BADAR J.

DATED : 12th FEBRUARY 2018.

P.C. :

1 This is an application sent by the applicant/accused
through jail for releasing him on bail during pendency of the
appeal filed by him.

2 The applicant/appellant/accused because of his penury
has sought legal aid and that is how Shri.Yashpal Thakur, the
learned Advocate was appointed to represent the
appellant/accused at the cost of the State.

3 The applicant/accused has been convicted of the

offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and he has been sentenced to suffer rigorous imprisonment for ten years apart from payment of fine of Rs.3,000/- and default sentence of six months.

4 Heard Shri.Thakur, the learned Advocate appearing for the applicant/appellant/accused. He argued that the applicant/appellant was on bail during pendency of the trial. He drew my attention to paragraph No.12 of cross-examination of P.W.No.2/ alleged victim of the crime in question to demonstrate that the FIR is lodged only because the P.W.No.2 was taken to the Hospital for medical treatment and the Doctor insisted her that for aborting the fetus, she is required to file the FIR. With this, the learned Advocate argued that evidence of the P.W.No.2/victim of the crime in question as well as that of her elder sister P.W.No.1 Renuka goes to show that the applicant and the P.W.No.2 married on 10/04/2014 and since then the applicant and P.W.No.2 were residing together at the house of the applicant/accused. The learned Advocate further drew my attention to the statement in deposition of P.W.No.1 Renuka as well as the P.W.No.2 to the effect that the act of the applicant/accused of marrying to the P.W.No.2, who at the relevant time was of 16 years of age, was not made a subject matter of complaint by either P.W.No.2 or her family members at any point of time. On the contrary, the relatives of the P.W.No.2 has accepted their matrimonial tie. With

this, the learned Advocate submitted that the applicant was on bail during pendency of the trial and he has not misused his liberty.

5 The learned Additional Public Prosecutor opposed the application by contending that the FIR lodged by the P.W.No.2 shows that the applicant had committed penetrative sexual assault on the P.W.No.2 and made her pregnant. Therefore, he is not entitled for bail.

6 I have carefully considered the rival submissions and also perused the copies of depositions of prosecution witnesses as well as the impugned Judgment and Order.

7 Evidence of P.W.No.2, who at the relevant time was 16 years of age, shows that she married the applicant/accused at village Wathar on 10//04/2014 and since then she started residing at the house of the applicant/accused along with his family members. Her chief-examination itself shows that on 31/04/2014, she returned to her parental house and then the applicant/ appellant/accused came to her home and took her to matrimonial house.

8 P.W.No.1 Renuka is elder sister of the P.W.No.2. Her chief-examination also shows that marriage between the P.W.No.2 and the applicant/accused was performed on 10/04/2014 at

Wathar. Cross-examination of this witness shows that the P.W.No.2 used to stay at her matrimonial house and she used to visit her parental house at the time of some functions after her marriage. This elder sister of the P.W.No.2 further admitted that no complaint against the applicant/accused was filed by them at any point of time. This elder sister of the P.W.No.2 further admitted that there was love affair between the P.W.No.2 and the applicant/accused and with the consent of both, marriage of the applicant/accused and the P.W.No.2 was performed on 10/04/2014.

9 With this, it is seen from the chief-examination of the P.W.No.2 that because of abdominal pain, she returned to her maternal house on 20/06/2014 and then she was taken to Civil Hospital, Satara, where it was found that she was pregnant and her pregnancy came to be terminated. Cross-examination of the P.W.No.2 shows that the FIR was then filed because the Doctor told her that for aborting her fetus she will have to lodge the FIR.

10 It is thus seen from version of the P.W.No.2/alleged victim of the crime in question as well as that of her elder sister P.W.No.1 Renuka that the marriage between the applicant/accused and the P.W.No.2 was performed with consent on 10/04/2014 and the P.W.No.2 thereafter started residing at her matrimonial house with the applicant/accused. She used to

attend functions at her parental house after her marriage. During this period, neither the P.W.No.2 nor her family members ever lodged any complaint in the matter, but it was at the instance of the Medical officer, the FIR came to be lodged. The applicant/accused was on bail during pendency of the trial. It is not seen that he has misused his liberty while on bail. The applicant/accused had not applied any force in the matter as seen from the evidence.

11 In the matter of **Satyam Ramchandra Fulore vs. The State of Maharashtra**¹ (Coram : Sadhana S. Jadhav, J.), 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 vs. State of Maharashtra**² in paragraph 12, this court has given guidelines while considering the case of a boy and a minor girl in love. Considering the fact no force or violence was applied to the alleged victim of the crime in question and the present applicant/accused as well as the victim of the crime in question were deeply in love with each other, I do not see any reason to deny bail to the present applicant/accused.

1 Criminal Bail Application No.1953 of 2014

2 2016 ALL MR (Cri) 1710

12 In this view of the matter, I am of the opinion that the applicant/accused is entitled to be released on bail during pendency of the appeal filed by him and, therefore, the order :

ORDER

- (i) The application is allowed.
- (ii) Substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.
- (iii) The application is disposed of accordingly.
- (iv) The copy of this Order be send to the concerned Jail Authority.

(A.M.BADAR J.)