

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.109 OF 2018**

Abhijit Kisan Nalawade Applicant
 Vs.
The State of Maharashtra Respondent

Mr. Sayaji D. Nangre for the Applicant.
Mr. Y.M. Nakhwa, APP for the State.

***Coram : Smt. Sadhana S. Jadhav, J.
Date : 5th February, 2018***

P.C.:

1 Heard the learned counsel for the applicant and the learned APP. Perused the papers of investigation.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 24th August 2017 in Crime No.210 of 2017, registered at Natepute Police Station, Taluka Malshiras, District Solapur, initially for the offence punishable under Section 363 Indian Penal Code and subsequently under Sections 366(A), 376(2)(i) of Indian Penal Code and under Sections 4, 8,11, 42 of Prevention of Children from Sexual Offences Act, 2012.

3 It is the case of the prosecution that one Lakhan Ramchandra Wagh lodged a report at the police station on 23rd

August 2017 contending therein that he happens to be the maternal uncle of Ms. "X". His sister Minakshi Hemant Bhosale was studying at Baramati. She was studying in Dr. Date School. Everyday he used to drop her to the school at 7.30 am. and take her back at 5.30 pm. On 16th August, 2017, he had dropped her to the school but at 5.00 pm., she was not found. He had enquired with her friend Gauri and Gauri had disclosed that Ms. "X" had not accompanied her. On the basis of the said report, Crime No.210 of 2017 was registered against the unknown person under Section 363 Indian Penal Code.

4 In the course of investigation, the maternal uncle had learnt that the present applicant had visited the school on some occasions. He had also written a chit to Ms. "X" and therefore he suspected that in all probabilities, the applicant, who resided as her neighbour at Baramati must have abducted Ms."X" and therefore the cellphone of the applicant was tracked. On 23rd August, 2017, on the basis of the cellphone, address of the applicant was traced and Ms. "X" was found in his custody. They had surrendered before the police station. The statement of Ms. "X" was recorded and she had disclosed that on 16th August, 2017, the present applicant had asked her to accompany him. She had been with the applicant in his car. The applicant had assured her that they would get married. They had been to Hadapsar, stayed there in the house of a friend and thereafter on 19th August 2017, they had been to Waghuli and

resided there in the room of another friend. She had disclosed that during that period i.e. from 16th August, 2017 to 23rd August, 2017, they had sexual intercourse on two occasions. The statement of the victim was recorded under Section 164 Cr.P.C. She had reiterated her contentions in the statement under Section 161 Cr.P.C. She had specifically stated that the applicant herein had not coerced or forced her and that she had no grievance against the applicant. Ms. “X” had neither disclosed to the doctor that she was forced to have sexual intercourse.

5 Learned counsel for the applicant submits that in fact it is a case of love affair. The applicant was residing as her neighbour at Baramati. She was shifted to village Natepute and was residing with her maternal uncle. According to the learned counsel for the applicant in all probabilities family members had learnt about the intimacy of the present applicant with Ms. “X” and therefore, she was sent to the house of her maternal uncle for schooling. Learned counsel for the applicant vehemently submits that the applicant cannot be punished for having fallen in love with a minor and his further detention would amount to punitive detention.

6 As against this, learned APP submits that despite the fact that she stated under Section 164 Cr.P.C. that she was not forced or coerced by the applicant to have sexual intercourse, consent of a

minor girl cannot be taken into consideration as she was hardly 14 ½ years old. The consent is out of question and therefore according to the learned APP the applicant does not deserve to be enlarged on bail. It appears from the papers of investigation that the applicant is also hardly 25 years old. There was a love affair between the applicant and Ms. "X". Although the consent cannot be taken into consideration, at the same time, the fact remains that the applicant had neither forced her nor coerced her. It is in these circumstances that this Court is of the opinion that the applicant is a young boy, deserves to be enlarged on bail.

7 The observations made hereinabove are restricted to the application under Section 439 Code of Criminal Procedure and shall not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial. Hence, the order :

ORDER

- 1 The application is allowed.
- 2 The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.
- 3 The applicant shall not Natepute village till the framing of Charge.

(*Smt. Sadhana S. Jadhav, J*)