

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION No. 368 OF 2018**

Ganesh Raosaheb Godse

...Applicant

Vs.

State of Maharashtra

...Respondent

Mr. Abhijeet R. Avachat for Applicant

Mr. S.R. Agarkar -APP

Mr. B.P. Deokale, PSI, Bibwewadi Police Station, Pune City

CORAM : SMT. SADHANA S. JADHAV, J.

DATE: JUNE 7, 2018

P.C.

1. Heard. This is an application under section 439 of the Criminal Procedure Code. The Applicant herein is arrested on 17th September, 2017 in Crime No. 272 of 2017 registered at Bibwewadi Police Station, Dist. Pune, initially for an offence punishable under Section 363 of the Indian Penal Code and subsequently under Section 376 of the Indian Penal Code and under section 11 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POSCO Act')

2. It is the case of the prosecution that on 16th September, 2017, Mrs.

Vijayalaxmi Rajesh Karande, the mother of Ms. 'X' had lodged a missing report in respect of her minor daughter as she could not be traced. On 16.9.2017, Crime No. 272 of 2017 was registered under Section 363 of the IPC and section 11 and 12 of the POSCO Act against the present Applicant as Ms 'X' was found in the company of the Applicant. It is the case of the prosecution that the present Applicant had met Ms. 'X' while she was traveling to Solapur, Tuljapur etc. He had given her the cell phone number. Initially her cousin was talking to him in the name of Ms. 'X'. Subsequently, she had contacted the present Applicant and had informed that it was her cousin, who was talking to him. Later on Ms 'X ' had called him to her school and they had met quite often. They were love with each other. That the present Applicant had gifted her hand set. She had talked with the Applicant on that hand set and left her hand set with her friend. They wanted to get married. However, the parents of the present Applicant and also Ms. 'X ' were against the said marriage as the Applicant herein is only 19 years' old. Ms. 'X' had, therefore, decided to elope with the present Applicant and accordingly, on 15th September, 2017, she had called him to her school and they both had left together to Phaltan. They reached Sangola. Then they went to stay in Pratik Lodge and had sexual intercourse. On the next day, they returned home. Hence, section 376 was added.

3. Ms. 'X' was taken for medical examination and she had given the history in her own words as follows:

“Victim knows the accused since month and was in love relationship with him. Both met in train journey to Solapur. They wanted to marry each other but relatives were against it. So they eloped together on 15/9/2017 at Sangola where they stayed in a lodge for a night. There is history of consensual sexual vaginal generative intercourse multiple times . Then next morning they went for a movie and in afternoon while going to Station Satana police caught them and brought to Pune. H/o physical assault done by police.”

4. Thereafter, the statement of Ms. 'X' was recorded under Section 164 (5) of Cr.P.C. and she had narrated the same story. She has admitted that she has love affair with the present Applicant and she wanted to marry and had voluntarily joined his company to Sangola.

5. The learned counsel for the Applicant submits that the Applicant and Ms. 'X' were in love and, therefore, it cannot be said that the Applicant had sexually intercourse against her wish. The said submission is corroborated by papers of investigation. Hence, the Applicant deserved to be released on bail.

6. Taking into consideration the history given by Ms. 'X' to the doctor as

well her statement recorded under section 164 (5) of Cr.P.C., this Court is of the opinion that the Applicant has made out a case for grant of bail as he has been in custody for almost nine months and also taking into consideration his age of 19 years' old.

7. The observations made herein above are only restricted to the present application filed under Section 439 of Cr.P.C. and it is made clear that the same shall not be taken into consideration for the purpose of quashing of FIR or discharge application since the application is not being heard on merits. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The Applicant be enlarged on bail on furnishing P.R. Bond of Rs.25,000/- and one or more solvent sureties.
- (iii) The Applicant shall not enter into the jurisdiction of Bibwewadi Police Station, Dist. Pune till the conclusion of the trial.

[SMT. SADHANA S. JADHAV, J.]