

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 418 OF 2018

Arun Vishnu Pawar.

...Applicant

v/s.

The State of Maharashtra.

...Respondent.

Mr. Samir Vaidya a/w. Mr. Rahul Kadu a/w. Ms. Mailaqua Mir I/b. S.K. Legal, advocate for the applicant.

Mr. Abhilesh Chitre, advocate for original complainant.

Ms. Veera Shinde, APP for State.

Mr. Vitthal V. Khedkar, Police Naik, Yerwada Police Station.

CORAM : SMT. SADHANA S. JADHAV, JJ.

DATE : JUNE 12, 2018.

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, 1908. The applicant herein is arrested on 20th May, 2017 in Crime No. 431 of 2017 registered at Yerwada Police Station, Pune for offence punishable under section 313, 376(2)(n), 506, 328 r/w. Section 34 of the Indian Penal Code and section 3, 4, 5, 6 of the Protection of Children from Sexual Offences Act, 2012.

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3 It is the case of the prosecution that on 19/5/2017 Ms. X lodged a report at the police station alleging therein that when she was in 8th standard, she had met the present applicant who was selling bananas on handcart near her house. They were got acquainted with each other. They exchanged cell phone number. In August, 2016, he had called her at his home. He had administered spurious drugs to her and thereafter, she was ravished. According to her, she was threatened of dire consequences. She used to meet him everyday at 7 p.m. They had sexual intercourse on several occasions. She had conceived pregnancy. Her mother had called him home and it was the opinion of the family member that he is unemployed and therefore, he should not get married. On 28/4/2017 prosecutrix had withdrawn Rs. 2000/- from her father's ATM card. They had been to the hospital. She had taken the pills which would induce medical termination of pregnancy. The applicant was arrested. Charge sheet is filed.

4 Today in the course of hearing of the present application, the learned Counsel representing the prosecutrix submits that the complainant and her mother are present in the court. It is candidly submitted that the prosecutrix desires to marry the applicant. That even when he was in jail, she had written letters to him which forms part of the compilation. According to her, her mother had forced her to file the

complaint. She has specifically stated that he should not feel guilty about anything and that she is willing to accompany him in future.

5 It is a peculiar case, where the investigation is set in motion on false ground at the instance of the mother. In fact, mother and daughter are fully aware that it is a case of consensual sex. The prosecutrix who was more than 16 years of age at the time of lodging of FIR had attained a sense of discretion. She had sufficiently attained the age of understanding to distinguish between the right and wrong. Today also it is submitted that it was only at the behest of mother of the prosecutrix that the prosecution has been initiated against the applicant.

6 Today, learned APP submits that in fact, the prosecutrix and her mother would deserve to be tried for an offence under section 195 and 195A of the Indian Penal Code. Such cases are rampant, it is because of this, the real cases of victims are being shadowed and misunderstood by the police machinery. Taking into consideration the fact that these are the courses to be adopted by the prosecution, this Court is not inclined to initiate any proceedings against the complainant and her mother, more particularly, since the prosecutrix is just 18 years old. It is a pathetic condition that the accused is sent to jail and remained in

custody for more than one year and then the Court is told that this is a false case and it was a case of consensual sex. As on today, mother of the prosecutrix is also willing to get her married to the applicant.

7 Hence, taking into consideration the facts of the case and the submissions advanced across the bar, the applicant deserves to be enlarged on bail.

8 The observations are prima facie in nature and shall not be considered for discharge application or at the time of trial.

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 solvent sureties in the like amount.

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

10 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]

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