

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

BAIL APPLICATION No. 608 OF 2018

Farid Khan Hasan Khan

...Applicant

Vs.

The State of Maharashtra

...Respondent

Ms. Avanti Inamdar i/b. Mr. Rameshwar N. Gite for Applicant

Mr. N.B. Patil – APP

CORAM : SMT. SADHANA S. JADHAV, J.

DATE: JUNE 7, 2018

P.C.

1. Heard. This is an application filed under section 439 of the Criminal Procedure Code. The Applicant herein is arrested in Crime No. I-59/2017 registered at Azad Nagar Police Station on 21st May, 2017, initially for the offence punishable under section 363 of the Indian Penal Code. After completion of the investigation, a charge-sheet is filed for the offence punishable under section 366A, 376 (2) (i) (n) of the Indian Penal Code and under section 4 of the Protection of Children from Sexual Offences Act, 2012

(for short 'POSCO Act').

2. It is the case of the prosecution that on 21st May, 2017, one Ubbaidd Rahman Abdul Rahman had lodged a report at Azad Nagar Police Station alleging therein that he has a daughter Mz.'X', who is about 16 years' old and was studying in B.B. Fatima High School and just passed her 10th Std. Examination. According to him, his wife had learnt from the neighbor that his daughter was fascinated towards Farid i.e. the present Applicant and they were into a relationship. On 20th May, 2017, at about 5.00 p.m. when the Complainant returned home, he was informed by his wife that their daughter is not returned back home. Since they had suspected, the present complainant had gone to his home. Before that he has noticed that an amount of Rs. 1,00,000/- which he had kept in the cupboard was missing. It is alleged that the present Applicant was not at home and, therefore, according to the Complainant, her minor daughter is abducted by the Applicant. On the basis of the said report, the offence was registered under section 363 of the Indian Penal Code. On 25th May, 2017, it had transpired that the present Applicant was in the company of Ms.'X' and they had been to Ajmer and they had returned on 23rd May, 2017.

3. In her statement before the police, Ms. 'X' had disclosed that they used to purchase grocery from the shop of the present Applicant, which was nearby her

house and, therefore, she got acquainted with him. That the Applicant used to help the needy people, she observed his nature and had fallen in love with him. She had expressed her love and he had accepted the proposal. Since then, they were in a relationship. The Applicant is a married man and is a father of six children. According to the prosecutrix, since two marriage are allowed in Muslim Religion, she has no objection to get married to him. Her parents wanted to get her married with somebody else. Therefore, she called the present Applicant to her house. She had insisted upon him to take her away from them as she desired to marry him. She had called him at home on 7th May, 2017 when the family members were not at home. At that time, they had sexual intercourse. She had conceived pregnancy. She had verified her pregnancy by using Prega News Kit. She had not informed the present Applicant that she had conceived pregnancy. Since she did not wish to get married with another person, she insisted upon the Applicant to take her away. In the same statement, she has also stated that she did not wish to reside with her parents.

4. The learned counsel for the Applicant vehemently submits that the Applicant had not cheated her. He apprised her that he is a married man and having six children. Despite that she was in love. The learned counsel for the

Applicant submits that the Applicant cannot be blamed for having sexual intercourse with a girl who is 16 years' old since Ms. 'X' was having love affair with the Applicant and on her own accord has eloped with him and there was no forceful rape on her and he only fulfilled her wishes. The learned counsel submits that, therefore, the Applicant deserves to be grant of bail.

5. This Court cannot accept the submissions made by the learned counsel for the Applicant. This Court cannot be oblivious of the fact that the law contemplates that the statement of minor girl cannot be taken into consideration, especially in the given circumstances. It is not a love affair of a young boy and a girl, who desire to get married but it is infatuation. The present Applicant happens to be more than the double of her age and a father of six children. It was his duty to convince her. It is apparent from her statement that she was fascinated due to his good nature. She was passing through a stage when the girls normally get attracted to good natured person.

6. Taking into consideration all these aspects, this Court is of the opinion that the Applicant does not deserve bail. However, in the given facts of the case, the trial is expedited.

7. The Special Court at Malegaon shall make every endeavor to conclude the recording of evidence and as far as possible by 31st October, 2018. With these observations, the application stands rejected and disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]