

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 646 OF 2018**

Ganesh Manik Galphade. .. Applicant.

V/s.

The State of Maharashtra. .. Respondent.

Mr. Vaibhav U. Ugle, advocate for applicant.

Mr. S.S. Pednekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JUNE 15, 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 2/8/2017 in C.R. No. 378 of 2017 registered at Bharati Vidyapeeth Police Station, Pune for offence punishable under section 363, 376 of the Indian Penal Code and 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012. Investigation is

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completed and charge-sheet is filed.

3 It is the case of the prosecution that on 1st August, 2017, Sita Bansode lodged a report at the police alleging therein that her daughter who is about 17 years old was missing since 31/7/2017. Hence, the offence was registered under section 363 of the Indian Penal Code. On 1/8/2017 the missing girl had called upon her mother who met her and had taken her to the police station. Statement of the victim was recorded on 1/8/2017. She had disclosed to the police that her friend Bhagyashri Bhandari had given a cellphone. Once she had received a call. That the caller had disclosed his name as Ganesh i.e. present applicant. They used to talk to each other. On 31/7/2017 the applicant is alleged to have called her to meet him at about 7 p.m.. Thereafter, he had taken her on his motor cycle and had disclosed his love for her. It is also stated that on that day, he had sexual intercourse with her against her wish. On the very next day, the prosecutrix was taken for clinical examination and she had disclosed to the doctor that she knew the applicant Ganesh for more than a week as he used to visit her at tea stall. They had exchanged their cell phone numbers and

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started having telephone conversation. They had developed love for each other. On 31/7/2017, he had called her to meet him in Katruj. Thereafter, he had taken her to Bhilarwadi and he had consensual sex and thereafter, he had dropped her home at 3 a.m. and her mother had lodged a report.

4 The date of birth of the prosecutrix is 23/2/2000. She was 17 years 5 months old on the date of the incident. Supplementary statement of the victim was recorded on 19/8/2017 and she had disclosed to the police that in fact, the cell phone was gifted to her by the present applicant and due to coercion and threat of her mother, she had misled the police that it was the phone of Bhagyashri Bhandari. She has also disclosed that the cell phone gifted to her by the applicant was misplaced/lost in the forest area on 1st August, 2017. The learned Counsel for the applicant placed implicit reliance on the disclosure of the prosecutrix to the doctor. It is a voluntary statement. She was more than 17 years old and had attained an an age of understanding. The doctor has specifically noted that it was a case of consensual sex. Hence, the applicant has made out a case for grant of bail.

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5 However, the observations made herein above are restricted to the application under section 439 of the Code of criminal Procedure, 1973 and shall not be considered for the purpose of considering discharge application or for trial.

6 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. 50,000/- with one or more sureties in the like amount.
 - (iii) The applicant shall not tamper with the evidence.
- 7 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]