

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

CRIMINAL BAIL APPLICATION NO. 1511 OF 2018

Ramesh Thirupala Naik	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

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Mr. Dilip B. Shinde, Advocate for the Applicant.
Ms. A. A. Takalkar, APP for the Respondent – State.
PSI Shrikant Jadhav, Pant Nagar Police Station, Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : SEPTEMBER 4, 2018.

P.C. :

This is an application for bail. The applicant is arrested in connection with CR No.543 of 2017, registered with Pant Nagar Police Station, Mumbai, for the offence punishable under Section 363 and 376 of IPC read with Sections 4, 8 and 12 and POCSO Act.

2 The prosecution case is that the victim is aged about 16 years. She is the daughter of the informant. On 11th December, 2017, at about 12:00 noon, the informant was informed by his brother-in-law that the victim had left the house by taking her clothes and locking the door of the house. The informant returned

home along with his wife and searched the victim in the vicinity and also tried to contact her on her mobile phone, which was switched off. The informant suspected that someone had kidnapped his daughter, and, therefore, the complaint of kidnapping was lodged with the police station on 15th December, 2017, against unknown person. During the course of investigation, it was found that the victim is in custody of the Kottuchu police station. Therefore, the local police approached the said police station and brought the victim girl to Mumbai. After the inquiries with the victim she informed that on 11th December, 2017, at about 11:30 a.m., she left the house and by train reached at Kalyan Railway Station. She boarded Hyderabad train for Hyderabad, and, informed the applicant that she is going to her native place. The applicant told her to come to Kulbarg. On 12th December, 2017, she reached at Kulburg, where the applicant - accused came to receive her. She was taken to hotel and there was physical relationship between them. Applicant, thereafter, dropped the victim at the house of her grandparents. On 15th December, 2017, the victim went to village of the applicant, where she came to know that he is already married. The investigating officer thereafter added Section 376 of IPC and Sections 4, 8 and 12 of POCSO Act. The applicant was arrested

on 29th December, 2017. On completing investigation, charge - sheet has been filed.

3 Learned advocate for the applicant submitted that the relationship was consensual in nature. The victim had volunteered to have the physical relationship with the applicant accused. He submitted that the evidence on record indicates that the victim and the applicant accused were having an affair. It is further submitted that the applicant is in custody from the date of arrest. There are no criminal antecedents against the applicant accused. Learned counsel relied upon several orders passed by this Court, wherein bail has been granted in similar situation. It is submitted that in the orders relied upon by him, this Court had granted bail to the accused even when the victim was minor with observation that 15 years is the age of understanding.

4 Learned APP submitted that the applicant was a married person and senior to the victim child. The victim was aged about 16 years at the time of incident. The consent is immaterial. Thus, the applicant has committed an offence under Section 376 of IPC and under the provisions of POCSO Act. Hence, the application be rejected.

5 On perusal of the FIR and the other documents which are part of charge - sheet, it is apparent that the victim had left the residence on her own on the date of incident and while leaving she had informed the applicant accused that she is going to her native place. She met accused at Kulberg. Both of them went to a hotel and there was a physical relationship. Subsequently, she noticed that the applicant was married person. Her statement was recorded under Section 164 of Cr.P.C. The statement also indicate that there was a love affair between the applicant and the victim. The investigation is completed and the charge-sheet is filed. Statements of complainant and other witnesses also indicate that the victim had left the house with her clothes without informing her family members. Several orders pointed out by learned counsel for the applicant are in respect to grant of bail in the cases in similar situation The applicant is in custody from 29th December, 2017. Charge - sheet is already filed. In the circumstances, bail is granted to the applicant on certain terms and conditions:

:: ORDER ::

- (i) Bail Application No.1511 of 2018, is allowed;
- (ii) The applicant is directed to be released on bail

in connection with CR No.543 of 2017, registered with Pantnagar Police Station, Mumbai, on his furnishing P.R. Bond in the sum of Rs.20,000/-, one or more sureties in the like amount;

- (iii) Applicant shall report to the Pant Nagar Police Station, once in a month on 1st Friday of the month between 10:00 a.m to 12:00 noon, till the conclusion of trial;
- (iv) Applicant shall attend the trial Court, as and when the matter appears for hearing, unless exempted by the Court for some reasons;
- (v) Applicant shall not tamper with the evidence;
- (vi) Applicant shall furnish his residential address and contact number to the investigating officer;
- (viii) Bail Application No.1511 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)