

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

BAIL APPLICATION NO.2439 OF 2017

Dipak Nandkumar Pednekar Applicant
 Vs.
The State of Maharashtra Respondent

Mr. Harshad Sathe i/by Mr. Anwar M. Landge for the Applicant.
Ms. Veera Shinde, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 31st January, 2018

P.C.:

1 Heard the learned counsel for the applicant and the learned APP. Perused the papers of investigation.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 13th April 2017 in Crime No.55 of 2017, registered at Rajapur Police Station, District Ratnagiri, for the offences punishable under Sections 376 (2) (i)(n), 354(B), 506 and 420 Indian Penal Code and Section 4 of the Protection of Child from Sexual Offences Act. The investigation is completed and the charge-sheet is filed against the present applicant for the said offences.

3 It is the case of the prosecution that on 12th April, 2017, Ms. "X" lodged a report at the police station alleging therein that she was studying in 11th standard. She had met the present applicant on the face-book. They got acquainted with each other. They used to chat with each other. On 20th March, 2017, he had called her on the cellphone and requested her to meet him near Rajapur Octroi Naka. She went there and thereafter they had been to Tarale, District Sindhudurg. They had lunched together and then they had checked into Nakshatra Lodging and Boarding. They had hired a room. After chatting for sometime, the applicant had allegedly proposed to her and then they had sexual intercourse. According to her, he had threatened her of dire consequences and therefore she had not raised hue and cry. It is alleged that on 5th April, 2017, he had again asked her to visit his house and there he had forced her to have sexual intercourse with him.

4 On the basis of the said report, Crime No. 55 of 2017 was registered. In the course of investigation, the investigating officer had recorded the statement of the Lodge owner and the person who had allowed them to check-in the hotel namely Vijay Kokare. It appears that the applicant had given his name as Dipak Sawant whereas the prosecutrix had given the correct name. They had checked into the hotel and had left the hotel after two hours. Vijay Kokare had disclosed that he did not notice any suspicious

behaviour while they were leaving the hotel. The investigating agency has also recorded the statement of the father of the victim. It appears that his daughter had informed him that the applicant had established sexual relations with her and on 5th April, 2017, he called her on the cellphone and informed her that his parents were not at home as they have been to Ratnagiri, he was alone at his home and therefore he invited her. She had obliged. She went to his house after the college hours. Both had lunch in the house of the applicant and thereafter the applicant had again proposed to her and requested her to inform her parents that they intend to get married. Her reaction was that she had not yet completed 18 years of age. Thereafter he again had sexual intercourse with her. The date of birth of the prosecutrix is 18th March, 2000 according to the school leaving certificate and the date of the incident is March and April 2017.

5 Learned counsel for the applicant submits that the girl/prosecutrix had attained the age of cognition and discrimination. It is a case of love affair. It is also submitted that in the eventuality that the prosecutrix was aggrieved by the incident dated 20th March, 2017, she would not have voluntarily visited the house of the applicant on 5th April, 2017, especially when he had informed her that his parents are not at home. That they had lunch together in his house. According to the learned counsel, this itself shows that there

was volition on the part of the prosecutrix. Be that as it may the investigation is completed and the charge-sheet is filed.

6 Upon considering the papers of investigation and more particularly the statement of the father of the victim and the lodge owner, this Court is of the opinion that the applicant has made out a case for grant of bail.

7 The observations made hereinabove are restricted to the application under Section 439 Code of Criminal Procedure and shall not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial. Hence, the order :

ORDER

1 The application is allowed.

2 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.

3 The applicant shall not enter into Rajapur, District Ratnagiri till framing of the charge.

(Smt. Sadhana S. Jadhav, J)