

Anand

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

BAIL APPLICATION NO. 2499 OF 2017

1. Paresh Zipa Waghe .Applicants
2. Anil Vishnu Bagle

Vs.

The State of Maharashtra .Respondent

Ms K. H. Aesankar, Advocate, for the Applicants
Mrs. Rutuja Ambekar, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 26.04.2018

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicants seek their enlargement on bail in connection with C. R. No. I-28 of 2016 registered with the Murbad Police Station, District – Thane, for the alleged offences punishable under Sections 363, 376, 366 r/w 34 of the Indian Penal Code (for short 'IPC') and Sections 3 & 4 of the Protection of Children from Sexual Offences Act.

3. Perused the papers. According to the prosecution, the

Applicant No. 1 was in a relationship with the survivor, aged 15 years and the Applicant No. 2 was in a relationship with the survivor, aged 16-17 years. Both the survivors, are sisters and daughters of the Complainant. According to the Complainant, both his daughters went missing from 28.02.2016, pursuant to which, he lodged a complaint with the Murbad Police Station alleging an offence punishable under Section 363 of IPC. During investigation, the Complainant's two daughters were found with the Applicants, pursuant to which, Section 376 and other sections were added. It appears that the Applicants were arrested on 09.03.2016. The survivors were also produced before the learned Sessions Judge and it appears that they refused to go with their father i. e. the Complainant and hence, they were sent to the Children's home at Bhiwandi. It also appears that one of the survivor, aged 15 years committed suicide on 01.10.2016 at her parents house. It is informed that pursuant to the suicide, C.R. No. I-153 of 2016 came to be registered as against the Applicant No. 1's parents and the Applicant No. 2's father. A perusal of the 164 statement of the survivor, aged 16-17 years shows that she and her sister, aged 15 years were in love with the Applicants respectively, for about one year prior to the incident. She has stated that they on their own accord had eloped with the Applicants. She has stated that they left the home in the night when all the family

members were asleep. She has further stated that she and her sister and the Applicants had gone to Shirdi on a motor cycle, where they stayed in a lodge for about four days, where they had physical relations. She has further stated that thereafter, they stayed at the Applicant No. 1's sister's house for three days, after which their family members and the police from the Murbad Police Station came and brought them to Murbad. No doubt, considering the fact that the survivors were minor, consent is immaterial. It appears that the Applicants are in custody since March, 2016. Investigation is complete and charge-sheet is filed. Having regard to the peculiar facts & circumstances of this case, the Application is allowed and the Applicants are enlarged on bail on the following terms & conditions :-

ORDER

- (i) The Applicants be enlarged on bail, on executing PR Bond in the sum of **Rs. 20,000/- each** with one or two sureties in the like amount;
- (ii) The Applicants shall report to the investigating officer of the concerned police station on the first Sunday of every month between 10:00 a. m. and 11:00 a. m. till the conclusion of the trial;
- (iii) The Applicants shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person

concerned with the case including the prosecutrix;

(iv) The Applicants shall not enter the jurisdiction of the Murbad Police Station till the completion of the trial except for the purpose of attending the concerned police station;

(v) The Applicants shall inform their latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(vi) The Applicants to cooperate in the conduct of the trial;

(vii) If there are two consecutive defaults in appearing before the trial Court or appearing before the investigating officer of the concerned police station / breach of any of the aforesaid conditions, the prosecution will be at liberty to apply for cancellation of the Applicant's bail;

4. The Application is allowed in the aforesaid terms and is accordingly disposed of.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)