

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

BAIL APPLICATION NO.2510 OF 2017

Sandip Vijay Yelpale		Applicant
<u>Vs.</u>		
The State of Maharashtra		Respondent

Mr. Kuldeep U. Nikam for the Applicant.
Mr. Ajay Patil, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 5th 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 22nd May 2017 in Crime No.190 of 2017, registered at Vaduj Police Station for the offences punishable under Sections 376, 363, 366(A) Indian Penal Code and Sections 4 and 8 of 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 on 18th August, 2017.

3 It is the case of the prosecution that on 18th May, 2017 Smt. Kerabai Ananda Wadkar lodged a report at the police station alleging therein that the present applicant happens to be a close relative as he is the son of sister-in-law of her daughter. He was original resident of Mangewadi, Taluka Sangola, District Solapur. That on 17th May, 2017, he had visited the house of the informant. They had visited the hospital since her grand daughter was having labour pains. It is alleged that her youngest daughter 'X' was at home. The present applicant had dropped them at the hospital and had withdrawn himself from their company on the pretext of purchasing some eatables. When they returned home, they learnt that their youngest daughter had accompanied the applicant and their whereabouts were not known.

4 On the basis of the said report, Crime No.190 of 2017 was registered at Vaduj Police Station for the offences punishable under Sections 363, 366(A) and 376 of Indian Penal Code. On 22nd May, 2017, the victim and the applicant were found in the house of the relatives. The victim had attempted to conceal herself, however, she was taken by her parents. It is alleged that the victim had disclosed that she was forcibly taken by the applicant despite knowing that she is a minor and thereafter he had got married to her and had intercourse with her on 4-5 occasions. The victim was referred for clinical examination. She had disclosed to the Doctor that the

applicant happens to be her cousin and they wanted to get married, so she accompanied him to village Bhalwani, where they got married in presence of 3-4 persons. Thereafter they had been to Madhavnagar, where she had sexual intercourse with the applicant 4-5 times. Learned counsel for the applicant had vehemently submitted that it is the case of consent. Although the victim was 16 years old, she would understand the consequence of her act. As against this, the learned APP submits that the applicant was a married man, despite that the applicant has married to the victim. In fact the victim was also aware of the fact that the applicant is a married man. On perusal of the disclosure statement to the Doctor, it would be clear that it is a case of consent. The statement of witnesses have been recorded, wherein it is revealed that the applicant had got married to the victim. The statement of the person who has performed the marriage has also been recorded and from the said statement, it cannot be said that the marriage was performed against her wish. Despite the fact that the applicant was a married man, the charge-sheet is not filed under Section 420 Indian Penal Code for the reasons best known to the investigating agency. Upon considering the papers of investigation and submissions advanced, this court is of the opinion that the applicant has made out a case for grant of bail.

5 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.50,000/- with one or more solvent sureties in the like amount.
- 3 The applicant shall not enter into Taluka Khatav, District Satara till disposal of the trial.

(*Smt. Sadhana S. Jadhav, J*)