

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

BAIL APPLICATION NO. 2727 OF 2018

Nandu Balu KedareApplicant

V/s.

The State of MaharashtraRespondent

Mr. Mahendra N. Sandhyanshiv for the applicant.

Mrs. J.S. Lohokare, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 17th OCTOBER, 2018.

P.C.:

. This is an application under Section 439 of Criminal Procedure Code filed by the aforesaid applicant, who has been arrested in C.R.No. I-115/2018 registered with Malegaon Taluka Police Station, Malegaon, Dist. Nashik for offences punishable under sections 363, 366(A), 376(I), 375(A) of the Indian Penal Code and Section 3(A), 4, 5(I) and 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. Heard Mr. Mahendra Sandhyanshiv, learned counsel for the applicant and Mrs. J.S. Lohokare, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

3. The aforesaid crime was registered pursuant to the first information report lodged by the mother of the prosecutrix, who at the relevant time was 15 years and 11 months of age. The first information report prima facie reveals that the prosecutrix had not returned home on 06/05/2018. One of the neighbours had seen her going alongwith the applicant herein on his motor cycle. The mother of the prosecutrix suspected that the applicant had kidnapped her minor daughter and hence, she lodged the first information report. Initially crime was registered for offences punishable under sections 366 and 363(A) of the Indian Penal Code. Subsequently, the prosecutrix was traced and her statement was recorded. The statement of the victim indicated that the applicant had sexual intercourse with her. Hence, the offence under section 376 of the Indian Penal Code as well as the provisions under POCSO Act came to be added.

4. The statement of the prosecutrix prima facie indicates that she had met the applicant on 06/05/2018. The applicant had told her that he loved her. She claims that she had accompanied the applicant as he had threatened to cause the death of her brother. Though the prosecutrix has stated that the applicant herein had sexual intercourse with her against her wishes, her statement prima facie reveals that she

was in the company of the applicant from 06/05/2018 till 10/05/2018. During this period, they have visited several places such as Dharangaon, Kopargaon, Mumbai, etc. During this period, she had not complained to any person that the applicant had kidnapped her or that the applicant had sexual intercourse with her against her wishes. Hence, the contention that the applicant had sexual intercourse with her against her wishes does not prima facie appears to be correct. Nevertheless, the prosecutrix is a minor and her consent was immaterial. The fact that the applicant had sexual intercourse with the prosecutrix would prima facie constitute statutory rape.

5. Be that as it may, the applicant is a young boy of 22 years of age. He is in custody since 11/05/2018. Detaining him in custody will bring him in contact with other hardened criminals. Charge sheet has already been filed and the presence of the applicant is no longer required in custody. The applicant is a permanent resident of Malegaon, Dist. Nashik and there is no possibility of the applicant absconding and/or thwarting the course of justice. The applicant has no criminal antecedents.

6. Considering the above facts and circumstance, in my considered

view, the Bail Application is allowed on following terms and conditions :-

(a) The applicant who is arrested in C.R.No.I-115/2018 registered with Malegaon Taluka Police Station, Malegaon, Dist. Nashik is ordered to be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twenty Fifty Thousand) with one or two solvent sureties in the like amount.

(b) The applicant shall furnish his permanent address and temporary address, if any, and his contact details to the concerned Court.

(c) The applicant shall not change his residential address without prior intimation to the Investigation Officer and to the concerned Court.

(d) The applicant shall not interfere with the victim or the other witnesses in any manner.

(e) The applicant shall report to the Investigation Officer or in his absence to the Senior Police Inspector, Malegaon Taluka Police Station on 1st Monday of every month until further orders.

(SMT. ANUJA PRABHUDESSAI, J.)