

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

Cri. BAIL APPLICATION NO. 401 OF 2019

Sanjay Raju Singh

... Applicant.

V/s.

The State of Maharashtra

... Respondent.

Mr.Subhash Jha, Advocate, a/w. Harekrishna Mishra & Sanjana
Pardeshi i/by Law Global Advocates for the Applicant.

Mr. S. R. Agarkar, APP for the State.

(Mr. Jatkar, PI, Chembur Police Station is present.)

CORAM : PRAKASH D. NAIK, J.

DATE : FEBRUARY 28, 2019.

PC :

1 The applicant is arrested on 11.09.2018 in connection with CR No. 270 of 2018, registered with Chembur Police Station, Mumbai, for the offence under sections 363, 376 of the Indian Penal Code and read with sections 4, 6 and 8 of POCSO Act. Initially the offence was registered under section 363 of the Indian Penal Code on 03.09.2018 and subsequently, section 376 has been invoked.

2 The case of the prosecution is that first information report was lodged by the mother of the victim under section

363 of the IPC, since the victim had left the house on 03.09.2018 and did not return. In first information report, it is stated that the complainant had noticed that the victim was in disturbed state of mind and, therefore, the enquiries were made with her on 02.09.2018 by taking her in confidence by the complainant. The victim had disclosed that she is in love with the applicant since last about six months. On the next day the victim left the house.

3 The statement of the victim was recorded. Apparently, the marriage was performed by the applicant and the victim on 04.09.2018. On 8th September 2018, she made phone call to the Chembur Police Station and on inquiry by her, whether any complaint of her missing has been received by the police. She also disclosed that she had left the house on her own accord and she is happy in the company of the applicant. Thereafter, on 10.09.2018, the victim had voluntarily attended Chember Police Station and her statement came to be recorded.

4 Investigation is completed and the chargesheet has been filed. The applicant had preferred an application for bail before the Sessions Court, which had been rejected.

5 Learned counsel for the applicant submitted that the victim was aged about 17 years at the time of the incident.

The applicant and the victim were having a love affair, which is admitted by the victim in her statement. It is submitted that although the victim was allegedly minor, the relationship between them was consensual in nature. She had accompanied the applicant voluntarily. They have performed their marriage in the temple. It is submitted that the facts emanated from the statement of the victim itself indicate that she was in relationship with applicant and had accompanied the applicant to various places. The statement also indicates that both of them went to Vapi and Surat and there was physical relationship between them.

6 Learned APP submitted that the victim was minor at the time of the incident. Her consent is immaterial. Statement of the victim is recorded under section 164 of the Cr. P.C., which is contrary to her version / statement recorded under section 161 of the Cr.P.C.. The applicant is aged about 24 years; whereas the victim is a minor girl, aged about 16 years.

7 I have perused the chargesheet. The first information report was lodged for the offence under section 363 of the IPC.. FIR indicates that the victim had disclosed to her mother that she was having love affair with the applicant since last six months. The statement of the victim was recorded on 10.09.2019, in which she has categorically

stated that she was acquainted with the applicant and she had developed friendship and fell in love with the applicant. On 02.09.2018, she was with the applicant and therefore, she had disclosed to her mother, her affair with the applicant. On 03.09.2019, she had left the house and voluntarily went to Santacruz. She gave a call to the applicant and then both of them went to Vasai and performed marriage in Ganesh temple. She has also stated that on 04.09.2018, they left for Vapi and stayed there in a room on the rental basis. There was physical relationship between them. It is stated that on 08.09.2018, she could trace the contact number of the Chembur Police Station and thereafter, she gave call to the police station and informed that she had left the house on her own accord and that she has love with the applicant. Statements of various other witnesses were recorded and thereafter, the chargesheet has been filed.

8 Learned APP has pointed out that subsequently, the statement of the victim has been recorded under section 164 of the Cr.P.C. on 29.09.2018. It is stated that the version of the victim in the said statement is contrary to what she has stated in the earlier statement. Assuming that the victim had given contrary version in said statement, the charge-sheet itself indicate that in her first statement, recorded in a detail, she has narrated the incident, as stated herein-above, and it is depicted that the she was having an affair with the applicant

and that she was voluntarily in physical relationship with the applicant. The applicant is in custody from the date of the arrest. The chargesheet is already filed. Further detention of the applicant is unwarranted. Case for grant of bail is made out. Hence, I pass following order :

ORDER

- i. Bail Application No. 401 of 2019 is allowed.
- ii. The applicant is directed to be released on bail in connection with CR No. 270 of 2018, registered with Chembur Police Station, on furnishing PR Bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.
- iii. The applicant shall report the concerned police station once in a month, on first Saturday of the month between 11 a.m. to 1 p.m..
- iv. The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of six weeks.

Bail Application is disposed of.

(PRAKASH D. NAIK, J.)