

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1893 OF 2019

Shwetang Bhaskar Nikalje] ... Applicant

Versus

1. The State of Maharashtra]
 2. Ramabai Satish Lalbige]
 3. Shivani Satish Lalbige] ... Respondents

Smt. Shubhangi Parulekar, Advocate for the Applicant.

Mr. Prashant Jadhav, APP for the State/Respondent No.1.

Mr. Ravindra Pachundkar, Advocate for Respondent Nos.2 and 3.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 19th SEPTEMBER, 2019.

P. C. :-

1. The applicant is seeking his release on bail in connection with C.R.No.77/2018 registered with Faraskhana Police Station, Pune City. The offence was registered on 16/04/2018 initially u/sec.363 of I.P.C. Subsequently, offence u/sec. 366 A, 212, 376, 109 of I.P.C., u/sec.3, 4, 6, 7, 8, 16, 17 of The Protection of Children from Sexual Offences Act, 2012 (POCSO), u/sec. 3 r/w 25 of the Indian Arms Act and u/sec.37 (1) of the Maharashtra Police Act were added.

2. The applicant was arrested on 03/06/2018 and since then he is in custody. The investigation is over and the charge-sheet is filed.

3. The FIR in this case is lodged on 16/04/2018 by mother of the victim who is Respondent No.2 in this application. She has stated that, at the time of incident, her daughter – victim was 17 years and 9 months of age. The informant come to know that, the applicant and her daughter were having love affair. She had warned her daughter to stay away from the applicant as the applicant was already married and was of criminal nature. On 07/04/2018 her daughter left her house and did not return. The informant and her relatives searched for her and finally lodged the FIR on 16/04/2018 against the applicant as the victim informed her telephonically that, she had eloped with the applicant and they were getting married. The investigation started.

4. In the meantime, the applicant was arrested on 03/06/2018. The victim's statement was recorded on 03/06/2018. She has stated in her statement that, since about past two years before the incident, the victim was knowing the applicant and they were in love relationship. She was aware that, the applicant was a married man

and her family had warned her from keeping relations with him. However, she did not pay any attention and continued with her love affair with the applicant. On 06/04/2018, she, on her own, left her house with the applicant. Thereafter, they went to various places and finally they stayed at applicant's friend Chetan's farm house for more than a month. At that time, they had their physical relationship. The victim's statement was recorded u/sec.164 of Cr. P.C. in which she had made allegations against the applicant that, the applicant had established physical relations against her wish after assaulting her. This statement was recorded on 14/06/2018.

5. Heard Smt. Shubhangi Parulekar, Ld. Counsel for the Applicant, Mr. Prashant Jadhav, Ld. APP for the State/Respondent No.1 and Mr.Ravindra Pachundkar, Ld. Counsel for Respondent Nos.2 and 3.

6. The first informant and the victim are present in the Court. They are represented by their Counsel. Respondent No.2 i.e. the informant has filed her affidavit-in-reply affirmed on 11/09/2019 and the victim herself who is now major has filed her affidavit in Court today. The victim has reiterated in her affidavit that, she was in love

relationship with the applicant and she was aware of his marital status. She has averred that, the applicant had never forced her to have physical relations and that she was still in love with the applicant. The informant in her affidavit-in-reply has stated that, she did not have any objection if the applicant is released on bail.

7. I have considered these affidavits. Ld. APP has left the decision to the Court.

8. Considering the background of allegations, at present it was a case of consensual relationship. Though at that time, the victim was minor and therefore technically the offence was committed. However, considering the affidavits filed in the Court by the victim and the informant, as well as, victim's statement before the police, it is more than clear that, it was a consensual love relationship. The effect of allegations can be decided during trial. However, at this stage, further custody of the applicant is not justified as the investigation is already over. The victim as well as the informant do not have any objection if the applicant is released on bail. The applicant is already in custody since 03/06/2018. In this background, I am inclined to grant bail to the applicant. Hence, the following order.

ORDER

1. The Applicant is directed to be released on bail in connection with C.R.No.77/2018 registered with Faraskhana Police Station, Pune City, on his furnishing P.R.Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
2. Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)