

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

CRIMINAL BAIL APPLICATION NO. 2123 OF 2019

Sandip Sambhaji Borade

...Applicant

Vs.

State of Maharashtra

...Respondent

- Mr. Atul R. Patil, Advocate for the Applicant.
- Mr. S.H. Yadav, APP for the State.

CORAM : SARANG V. KOTWAL, J.

DATE : 16th AUGUST, 2019

P.C. :

1. The applicant is seeking his release on bail in connection with CR No. 211/19 registered at Hadapsar Police Station, Dist. Pune. The FIR was initially lodged on 5th March 2019 for the offence punishable under Section 363, but subsequently Section 376 (1) of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 were added.

2. The applicant was arrested on 7th March 2019 and since then he is in custody.

3. The FIR in this case is lodged by the informant on 4th March 2019, who was the father of the victim girl. According to the informant, the victim had completed 17 years of age and was

studying in 12th Standard. It is mentioned in the FIR that on 3rd March 2019, at around 8.00 p.m., when he was at Chausala, Dist. Beed, he received a phone call from his wife, telling him that since 12.30 p.m., on that day, their son aged 12 years and the victim girl were not seen. On further inquiries, the informant's wife was told that both the children were taken away by the present applicant, who was a distant relative of the informant. The informant's wife tried to contact the applicant telephonically, but she could not contact him. The informant came back to his place and lodged this FIR on 4th March 2019.

4. Before lodging of the FIR, his son had returned home and he had informed that the applicant had taken away him and his sister, the victim girl, to Solapur.

5. The investigation was carried out and the applicant was arrested. The charge-sheet is already filed.

6. Heard, Mr. Atul Patil, learned counsel for the applicant as well as Mr. Yadav, learned APP for the State.

7. Learned counsel for the applicant submitted that the statements of the victim as well as her brother show that there was

consensual relationship between the applicant and the victim. The victim and her brother had accompanied the applicant on their own. He submitted that the medical evidence shows that the victim was habituated to sexual intercourse and therefore, no offence is made out against the present applicant. He submitted that the applicant is already in custody since March 2019 and no further purpose would be served by keeping him in custody till conclusion of the trial.

8. Learned APP opposed these submissions. He submitted that the statements of the victim show that the applicant had taken advantage of their relationship. The victim was a minor and therefore the offence is made out.

9. I have considered these submissions. The memo of the application shows that the applicant is 37 years of the age, i.e. twice the age of the victim girl. The applicant was a distant relative of the victim. The statements of the victim recorded under Section 161 as well as under Section 164 of the Cr. P.C. show that victim and her brother were taken in a car by the present applicant. Both of them were kept in a lodge at Pune. There, the applicant

established physical relations with the victim. The victim has stated that the relations were established forcibly. The victim was scared and did not tell anybody else. On the next day, the brother of the victim was allowed to go from the applicant's custody. The victim, however, was kept with him and was taken to Ahmednagar. In the meantime, the applicant received information that the FIR was lodged against him and therefore, the victim was left at Manjari near her house. Thereafter, he left from there.

10. Her statement under Section 164 of the Cr. P. C. is on similar lines. Thus, offence as alleged is clearly made out from her statements. Offences are serious. The applicant has taken wrong advantage of young age of the victim. He intentionally and knowingly committed this offence. Therefore, no leniency can be shown to him at this stage. Though the charge-sheet is already filed, considering the gravity of the offence, I am not inclined to grant any relief to the applicant. Application is rejected and is disposed of.

(SARANG V. KOTWAL, J.)