

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

BAIL APPLICATION NO.2205 OF 2019

Sunny Bapu Mohite

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr. Ghanasham S. Jadhav, Advocate for Applicant.
- Smt. A. A. Takalkar, APP for the State/Respondent.
- Mr. Patre S. B., PSI, Baramati Police Station, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 16th AUGUST, 2019

P.C. :

1. The applicant is seeking his release on bail in connection with C.R. No.547/2019 registered at Baramati Police Station, Pune on 26/6/2019 initially under Sections 363 and 366 of IPC and under Sections 8 and 12 of the Protection of Children from Sexual Offences (POCSO) Act. Subsequently, Section 376 of IPC and Section 4 of the POCSO Act are added.

2. The FIR was lodged by father of the victim on 26/6/2019. According to him, his daughter was 17 years and 11 months old. She was studying for the course of Architecture. On 24/6/2019, the informant had dropped the victim to her college at 9 o' clock in the morning. At 10 o' clock when he came back to the college, he came to know that the victim had not attended the college. He tried to call the victim on her mobile phone but her number was not reachable. On further inquiry, informant came to know that the victim was taken away by the applicant. On this basis, the FIR was lodged.

3. The investigation was carried out. The victim and the applicant themselves came to the Police Station on 26/6/2019 itself. On 27/6/2019, the victim's statement was recorded. She has stated that she was acquainted with the present applicant since about four years. The applicant suggested that they should get married. The victim herself gave him the documents for contracting marriage through Court. She had given him a copy of her Aadhar Card, School Leaving Certificate and S.S.C. passing

certificate. At that time, the victim had suggested that she had not completed 18 years of age. The applicant told her that her documents showed that she had already attained the age of majority. On 24/6/2019, the victim and the applicant went to Registrar's office at Swargate and got married. Thereafter, they had their physical relations though she claimed that it was against her wish. Thereafter, the applicant came to know that there was the police case lodged against him. Therefore, the applicant came to the police station. On the basis of her statement, applicant was arrested on 27/6/2019 and since then, he is in custody.

4. Heard Mr. Ghanasham Jadhav, Ld. Counsel for the Applicant and Smt. Takalkar, Ld. APP for the State.

5. Mr. Jadhav submitted that from the statement of the victim it is more than clear that the victim had willingly accompanied the applicant at various places and more particularly had remained present before the Registrar willingly. She had never protested even before the Registrar when they got married. Therefore, obviously she is a willing and consenting party to this

marriage. He submitted that all the documents mentioned above show her date of birth as 14/5/2001. He therefore, submitted that no offence is committed by the present applicant.

6. Ld. APP pointed out that the statement of the victim under Section 164 of Cr.P.C. is recorded on 28/6/2019 wherein she has stated that she was taken away by the applicant against her wish and he had kept physical relations with her against her wish. She had stated in her statement recorded under Section 164 of Cr.P.C. that the applicant had threatened her. She further relied on her birth certificate which shows her date of birth as 14/7/2001. Thus, technically she was about 1 month short of attaining majority when she was taken away by the applicant.

7. I have considered all these submission. The prosecution story including the victim's statement does indicate that there was a consensual relationship between the applicant and the victim. The applicant had acted upon the documents provided by the victim herself. They mentioned her date of birth as 14/5/2001. Therefore, on the date of incident of alleged

abduction, she had already completed 18 years. The tenor of the statement of the victim shows that she had willingly accompanied the applicant to various places including to the office of the Registrar where they had got married. Therefore, though she had made allegation of threats or had claimed that she was not a willing party, her conduct shows otherwise. In this view of the matter, further custody of the present applicant is not justified. He therefore, deserves to be released on bail. Hence, the following order.

ORDER

- (i) The applicant is directed to be released on bail in connection with C.R. No.547/2019 registered at Baramati Police Station, Pune, on his executing P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in like amount.
- (ii) The application is accordingly disposed of.

(SARANG V. KOTWAL, J.)