

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

CRIMINAL BAIL APPLICATION NO. 2632 OF 2019

Anirudha Radheshyam Yadav ... Applicant

Versus

The State of Maharashtra ... Respondent

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Ms. Nazneen Khatri i/by Adil Khatri,
Advocate for the Applicant.
Mr. Avinash Khamkhedkar, APP for Respondent-State.
Mr. Manoj Chalke, P.I., Kurar Police Station.

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CORAM : SANDEEP. K. SHINDE, J.
DATE : 09th JANUARY, 2020.

P.C.

Heard.

1. It is an application under Section 439 of Code of Criminal Procedure, 1973.

2. In the case of **S. Varadarajan Vs. State of Madras AIR 1965 942**. The Apex Court has held thus :
“Where a minor girl alleged to be taken away by the

accused person, had left her father's protection knowing and having capacity to know the full import of what she was doing and voluntarily joined the accused, it could not be said that the accused had taken her away from the keeping of her lawful guardian within the meaning of section 361 of the Indian Penal Code, 1860 ("IPC" for short). Something more had to be done in a case of that kind, such as an inducement held out by the accused person or an active participation by him in the formation of the intention either immediately prior to the minor leaving her father protection or at some earlier stage."

3. In the case in hand, the victim was 14 years and 11 months old on the date of incident; whereas the applicant was 25 years old. It appears from the victim's statement that, on 18.04.2019 at 01:00 am., she had left her parents' house secretly with her belongings to go to the accused and thereafter, they had traveled from one place to another, right from Mahableshwar to Bhusawal and thereafter to Delhi. Her

statement shows that on 22.04.2019, she left with the complainant for two days, to go to Gajipur, UP, the village of the applicant, where she was persuaded by the relative of the applicant to return back to home and thereafter, both had returned to Mumbai. The said description of facts do not even remotely suggest that the applicant had ever induced and/or forced the victim to leave her parents' house. Thus, prima facie, the ratio laid down in the S. Varadarajan's case (supra) is applicable to the case in hand.

4. So far as the offences punishable under Section 4, 6, 8 of POCSO Act (special law) is concerned, it may be stated that the provisions of this law are, though, stringent in nature, would not deter the Court to grant or refuse bail in order to secure the ends of justice. The conduct of the victim is indicative of the fact that she had left the home of her parents by her own will and that she had surrendered to the physical desires of the applicant out of her love and affection for him. It is not the

case of the prosecution that the applicant had promised to marry her. Additionally, it is also not a case where under the misconception of the fact, she had served herself to the desire of the applicant for physical relations. No doubt, that the applicant, under the preview of POCSO Act, is a minor, however, the facts of the present case indicate that she had sufficient knowledge and capacity to know full import of what she was doing and had only thereafter voluntarily joined the complainant.

5. Thus, taking into consideration the peculiar facts of the case, the present application is allowed.

6. The applicant has been in custody since April 2018. The trial is not likely to commence in the near future. It is submitted that the applicant's presence can be secured by imposing conditions.

7. It is further submitted that applicant was not living in the vicinity of the victim at the time of the

occurrence of the alleged incident.

8. In furtherance of the reasons stated herein above, the application is allowed and hence the following order.

ORDER

(i) The applicant is directed to be released on bail in Crime no.155 of 2019 registered with Kurar Police Station, on executing P.R. Bond for the sum of Rs.25,000/- with one or more sureties in the like amount;

(ii) The applicant shall not live in the vicinity of the victim until the conclusion of trial, the trial is expedited;

(ii) The applicant shall furnish the particulars of his residential address as well as permanent address and mobile number details to the investigating officer within seven days from the

date of his release on bail;

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

9. The application is allowed in the aforesaid terms and disposed off.

10. It is made clear that observations made hereinabove be construed as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

11. All concerned to act on the authenticated copy of this order.

(SANDEEP. K. SHINDE, J.)