

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

**CRIMINAL BAIL APPLICATION NO.3257 OF 2019**

**Nilam  
Kamble**

Digitally signed  
by Nilam Kamble  
Date: 2020.09.09  
19:33:46 +0530

**Satish Balu Suryawanshi**

**..Applicant**

**V/s.**

**State of Maharashtra**

**..Respondent**

----

**Mr.Mahendra N. Sandhyaanshiv for the Applicant.**

**Mr.H.J. Dedhia, APP for the Respondent-State.**

----

**CORAM : C.V. BHADANG, J.**

**DATE : 09<sup>th</sup> SEPTEMBER 2020  
(Through Video Conference)**

**PC.**

1. This is an application for bail. The applicant is facing prosecution for the offence punishable under Section 376, 363 and 366 of the Indian Penal Code and Section 4 and 12 of the Protection of Children From Sexual Offence Act, 2012 ('POCSO' for short).

2. According to the prosecution the applicant had eloped with the prosecutrix who was then aged 16 years and had forcible intercourse with her.

3. I have heard the learned counsel for the applicant and the learned Additional Public Prosecutor. With the assistance of the learned counsel for the parties I have gone through the FIR lodged by the father of the prosecutrix as well as the statement of the prosecutrix recorded on 08<sup>th</sup> December 2018.

4. The date of birth of the prosecutrix is 20<sup>th</sup> August 2002 and the incident in question has happened somewhere 01<sup>st</sup> December 2018. Thus, it can be seen that the prosecutrix at that time was 16 years and 4 months of age. On 30<sup>th</sup> November 2018, according to the prosecutrix the applicant had asked her to come near Samata Vidyalaya, Tehare on the following day at 11.00 a.m. and assured that both of them will marry. *Prima facie* it appears that the prosecutrix went along with the applicant and the applicant is alleged to have taken her to his native place at Moongse and it is there that according to the prosecutrix she was subjected to forcible sexual intercourse.

5. *Prima facie* insofar as the offence under Section 363 and 366 are concerned the Supreme Court in the case of **S. Varadarajan V/s. State of Madras**<sup>1</sup> has held thus :-

1 AIR 1965 SC 942

"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."

6. The learned counsel for the applicant has placed reliance on the decision of this Court in case of ***Anirudha Radheshyam Yadav V/s. The State of Maharashtra***<sup>2</sup> in order to submit that in similar circumstances, where the girl was 14 years and 11 months, this Court placing reliance on *S. Varadarajan (Supra)* has granted bail.

7. *Prima facie* it appears that the prosecutrix being aged more than 16 years had accompanied the applicant. The investigation is complete and the charge sheet is filed.

8. The applicant is in custody since 08<sup>th</sup> December 2018. Looking to the present situation the trial is not likely to commence

in near future. Having regard to the over all circumstances the following order is passed.

**ORDER**

(i) The applicant shall be released on bail on executing PR Bond in the sum of Rs.25,000/-with one or two solvent sureties in the like amount.

(ii) The applicant shall undertake to remain present before the learned Sessions Judge during the course of the trial and shall not tamper with the prosecution evidence or witnesses.

(iii) In the event of the breach of the any of the conditions the bail is liable to be cancelled.

**C.V. BHADANG, J.**