

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

CRIMINAL BAIL APPLICATION NO. 3299 OF 2019

Wajidali Israr Malik

...Applicant

Versus

The State of Maharashtra
and Anr.

...Respondents

...

Mr. Sushil M. Gaglani, Advocate for the Applicant.
Mr. S.R. Agarkar, APP for Respondent-State.
Mr. D.A. Patil, A.P.I. Dindoshi Police Station.

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CORAM : SANDEEP. K. SHINDE, J.
DATE : 22nd JANUARY, 2020.

P.C.

Heard.

1. It is an application under Section 439 of Code of Criminal Procedure, 1973 ("Cr.P.C." for short).
2. Applicant is seeking enlargement on bail in Crime No.340 of 2019 registered with Dindoshi Police Station for the alleged offences punishable under

Sections 363, 376 of the Indian Penal Code, 1860 ("IPC" for short) r/w Section 4 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO" for short).

3. Perused the final report. This case is squarely covered by dictum of the Hon'ble Apex Court in the case of **S. Varadarajan Vs. State of Madras AIR 1965 942**, wherein it was 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 IPC".

4. In this case as on the date of the incident, the victim was 17 years and 11 months old. Evidence on record including the statement of victim's mother, it is indicative of the fact that the victim had volunteered and submitted to the physical desires of

the applicant. Additional statement of victim's mother recorded on 15.07.2019 reinforces this fact.

5. The applicant has been in the custody since 15.07.2019. The investigation in the case is over.

6. Learned APP contended that the psychiatric evaluation of the victim done before the alleged incident shows victim was diagnosed with the border line personality disorder. I have also perused the narration of the victim to the Medical Officer which also reinforces of the fact that she was love with the applicant and had voluntarily joined his company. The fact cannot be overlooked that as on the date of the incident, the applicant had mental capacity to know what she was doing.

7. In view of the facts of the case, the application is allowed and the applicant is directed to be released on bail on the following conditions.

ORDER

(i) The applicant is directed to be released on bail 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 /jurisdiction in which the victim resides till the charge is framed;

(iii) The applicant shall furnish the particulars of his residential address as well as permanent address and contact details to the investigating officer within seven days from the date of his release on bail;

(iv) The applicant shall not establish, directly or indirectly any contact with the victim or other witnesses;

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

with the case;

(vi) The prosecution is at liberty to move the Court in case, the applicant attends to influence the victim and contact her ;

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

9. It is made clear that observations made hereinabove shall 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.

(SANDEEP. K. SHINDE, J.)_