

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

CRIMINAL BAIL APPLICATION NO. 3530 OF 2019

Santosh Tulsiram Rathod ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Aniket Nikam i/by Vivek Arote, Advocate for the
Applicant.

Mr. S.H. Yadav, APP for Respondent-State.

...

CORAM : SANDEEP . K. SHINDE, J.

DATE : 12th MARCH, 2020.

P.C.

Heard.

1. Applicant is seeking enlargement on bail in Crime No.18 of 2019 registered with Alankar Police Station for the alleged offences punishable under Sections 363, 366-A, 376(2)(i)(n) of the Indian Penal Code, 1860 ("IPC" for short) alongwith Section 4 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO" for short).

2. Applicant came to be apprehended on 24.01.2019. Investigation in the case is over. I have perused the final report.

3. Material on record indicates that the victim had left the company of her parents voluntarily and had chosen to remain in the company of the applicant nearly for ten days which is also evident from her statement recorded under Section 164 of the Code of Criminal Procedure, 1973. Besides her narration to the medical officer shows that she wanted to marry the applicant. Therefore, prima facie, it appears that she was not forced by the applicant to accompany him from one place to another and also that the victim had submitted to physical desires of the applicant. On this ground, the learned counsel for the applicant seeks release of the applicant on bail.

4. Learned APP opposed the application, stating that at the relevant time, the victim was 16 years old. According to him, in view of the age of the victim her

consent is immaterial.

5. Be that as it may, evidence on record prima facie suggests that the victim had left her father's protection knowing and having capacity to know the full import of what she was doing and had voluntarily joined the accused, therefore, 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 as held by the Hon'ble Apex Court in the case of **S. Varadarajan Vs. State of Madras AIR 1965 942.**

6. I have perused victim's statement under Section 164 of Cr.P.C. She is a college student who had stated that her family members were opposed to her relationship with the applicant and therefore, she had voluntarily left her parents home. It appears she had called the applicant on his cell phone and asked him to come at the Pune railway station and thereafter both left for Solapur. In second para, she had stated that it was her voluntary statement & nobody pressurized her into it.

7. Thus, taking into consideration, the evidence available on record, the application is allowed and applicant is therefore, 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 report to the Investigating Officer once in a month i.e. 2nd Monday of each month commencing from April, 2020 between 11 am. to 01 pm. till the charge is framed;

(iii) The applicant shall not live in the jurisdiction of police station 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;

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.)_