

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

21 BAIL APPLICATION NO.253 OF 2021

HITESH S/O KISHOR THAKARE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. G.R. Syed h/f. Imtiyaz I. Pathan
APP for Respondents/State : Mr. S.P. Sonpawale
Advocate for Respondents : Mr. V.B. Garud for R/2

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CORAM : M.G. SEWLIKAR, J.
DATE : 6th September, 2021

ORDER:-

Heard.

2. Prosecution case in brief is that the victim is the daughter of the informant. It is alleged in the FIR that on 06.08.2020 in the evening the victim was not seen in the house. Therefore, they started searching for her. On taking search, he learned that the applicant aged 22 years kidnapped her. Accordingly, FIR came to be lodged on 08.08.2020. On that basis offence under Section 363 of the I.P.C. came to be registered.

3. It is not in dispute that age of the victim on the date of the incident was 14 & ½ years.

4. Upon investigation it was revealed that the applicant had taken

the informant on the motorcycle to village Kothli and thereafter to village Velda in Gujarat State. He had sexual intercourse with her. Therefore, offence under Section 366(A), 376 of the I.P.C. and under Section 3(A), 4, 5 (L), 6 of POCSO Act came to be registered.

5. Heard Shri Syed learned counsel for the applicant, Shri S.P Sonpawale learned APP for the State and Shri Garud learned counsel for the respondent no.2-informant.

6. Shri Syed submitted that there is delay in lodging the FIR. He submitted that there is no evidence to show that the applicant had sexual intercourse with the informant. He, therefore, prayed for releasing the applicant on bail.

7. Learned APP Shri Sonpawale and Shri Garud submitted that the victim has been consistently maintaining that the applicant had sexual intercourse with her against her will. Therefore, offence under Section 366-A and offences under POCSO Act are made out.

8. So far as medical evidence is concerned it does not support the prosecution case. Medical evidence shows that there was old healed scar to hymen. This medical examination was done on 12.08.2020 and the alleged kidnapping took place on 06.08.2020. Thus, there was a small gap of five

days in the alleged sexual intercourse and the examination. In this view of the matter and having regard to the fact that the applicant is 22 years old and has no criminal background and that he will be available for trial, case for bail is made out. Moreover, considering the pandemic situation created due to Covid-19, trial is not likely to commence in the near future. In this view of the matter, I am inclined to release the applicant on bail. Hence the following order is passed:

ORDER

- I) Application is allowed.
- II) Applicant be released on PR bond of Rs.30,000/- with one solvent surety in the like amount, in connection with Crime No.252 of 2020 under Section 323, 363, 366(A), 376 of the I.P.C. and under Section 3(A), 4, 5 (L), 6 of POCSO Act registered with Upnagar Police Station, District Nandurbar on condition that he shall not enter village Kothli Khurd, Taluka & District Nandurbar and shall not keep any contact with the informant till the conclusion of the trial.
- III) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]