

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

932 BAIL APPLICATION NO.819 OF 2021

Santosh S/o. Devidas Mujmule
Age: 25 years, Occu.: Agri.Labour,
R/o.Ukhali (Bk.), Tq.Sonpeth,
Dist.Parbhani.
At present Central Jail, Parbhani. ..Applicant

VERSUS

1. The State of Maharashtra
Through Sonpeth Police Station
Dist.Parbhani.
2. XYZ d/o. Balasaheb Kishanrao Kalsaetkar
(Minor) u/g. of father Balasaheb
Kishanrao Kalsaetkar
Age: 53 years, Occu.: Agril.
R/o. Ukhli (Bk.), Tq.Sonpeth,
Dist.Parbhani. ..Respondents

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Advocate for Applicant : Shri Eknath P.Sawant h/f.
Shri Mahesh P. Kale
APP for Respondent No.1 : Shri A.V.Deshmukh
Advocate for Respondent No.2 : Shri Prashant K. Nikam and
Smt. Meenal Prashant Nikam
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CORAM : M.G.SEWLIKAR, J.

DATE: 9th September, 2021

PER COURT:-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail.

2. Heard Shri Eknath P.Sawant holding for Shri Mahesh P. Kale, learned counsel for the applicant, Shri A.V.Deshmukh, learned APP for respondent No.1-State and Shri P.K.Nikam and Smt.M.P.Nikam, learned counsel for respondent No.2.

3. Shri Sawant, learned counsel for the applicant submitted that the informant-victim was of the age of 17 years at the time of the incident. She was of the age of understanding at the time of the incident. He submitted that the prosecution's case is that the applicant aged 22 years kidnapped the victim and had forcible sexual intercourse with her. He submitted that the evidence collected by the prosecution itself clearly shows that the victim had run away with the applicant as the parents of the victim were trying to settle her marriage elsewhere for which she was not ready. He submitted that the applicant and the victim are in love with each other. He further submitted that while giving medical history also she mentioned that alleged sexual intercourse was with her consent and that she had married the applicant in Gujarat.

4. Shri Deshmukh, learned APP for respondent No.1-State and Shri Nikam, learned counsel for the informant argued that the victim had given the statement that the applicant and the victim were in love with each other as the applicant had threatened her

to give such statement. He submitted that in the trial Court also the victim had appeared before the Sessions Court and had objected for release of the applicant on bail. Her apprehension is that the applicant may contact her and pressurize her to give the statement the way applicant wants.

5. Admittedly, the victim was more than 17 years of the age at the time of the incident. Her statement under Section 164 of the Code of Criminal Procedure and the history which she narrated before the Medical Officer show that she had married the applicant and had sexual intercourse with consent. Of course, consent of the victim is no consent in the eye of law. Charge-sheet is filed. Therefore, physical custody of the applicant is not required. The applicant has no criminal antecedents. Applicant is not likely to flee from justice. Considering the fact that the applicant is also a college going boy, case for bail is made out. To allay the fear of the victim that the applicant may pressurize her, stringent condition can be imposed on the applicant. In view of this, the following order is passed:

ORDER

- i) Application is allowed.

ii) Applicant be released on P.R.Bond of Rs.25,000/- (Rs. Twenty-five thousand only) with one solvent surety in the like amount, in connection with Crime No.0022 of 2021, registered with Sonpeth Police Station, Dist.Parbhani, under Sections 363, 366(A), 376(2)(i)(n) of the Indian Penal Code and under Sections 6, 8 and 12 of the Protection of Children from Sexual Offences Act, and on condition that he shall not enter the village of the victim and adjoining village till the conclusion of the trial and shall not keep any contact with the victim till the conclusion of the trial.

iii) Application is disposed of.

(M.G.SEWLIKAR)
JUDGE

SPT