

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

ANTICIPATORY BAIL APPLICATION NO. 757 OF 2021

Vikas s/o Baburao Kharat ... **Applicant**
Age 24 Years, Occu: Agri
R/o Kathoda, Tq. Georai Dist. Beed.

VERSUS

1. The State of Maharashtra, ... **Respondents**
Through Police Station Officer,
Georai Police Station, Dist. Beed
2. X.Y.Z. c/o Shriram s/o Ankush Ghatul,
Age 41 years, Occu: Agri,
Saraswati Colony, Georai,
Tq. Georai, Dist. Beed.
P/a. Kathod, Tq. Georai, Dist. Beed.

Mr. V. P. Savant, Advocate for the applicant,
Mrs V. S. Chaudhari, A.P.P. for the State.
Mr. Amol S. Gandhi, Advocate for respondent No.2

CORAM : V. G. BISHT, J.
RESERVED ON : 23rd August, 2021.
PRONOUNCED ON : 1st September, 2021.

ORDER:

1. This is an application under section 438 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No.95/2021 registered with Georai Police Station, District Beed for the offences punishable under Sections 363, 376, 376(m) of the Indian Penal Code, 1860 and Sections 4, 6, 8 of Protection of Children from Sexual Offences Act.

2. It is the case of the prosecution that the informant's daughter namely "X" aged 16 years, at the relevant time, was student of Class 10. On 12.03.2021, at about 8.45 a.m. she left for school, however, did not return till evening. The informant made enquiry but could not get any information about the victim. On next date i.e. 13.03.2021, when the informant saw CCTV footage at Police Station, Georai, he found victim accompanying the applicant at about 8.54 a.m. Accordingly he lodged the report.

3. Mr. v. P. Savant, learned counsel for the applicant, submits that at the relevant time, victim was more than 16 years of age and had attained the age of understanding which is apparent from the facts and circumstances of the case. Since the victim on her own accompanied the applicant, the question of inducement or abduction does not arise. Moreover, the applicant is permanent resident of Kathoda village and therefore, there are no chances of absconding from justice.

4. Mrs. V. S. Chaudhari, learned A.P.P., on the other hand, opposed the submissions by contending that since the victim was minor, her consent was immaterial. Similarly, since investigation is in progress, the custody of the applicant is necessary for effective investigation.

5. Mr. A. S. Gandhi, learned counsel for respondent No.2-informant, would submit that after passing of the impugned order by the learned Special (POCSO) Judge, Beed the applicant again abducted the

victim. There is no merit in the application and therefore the same is liable to be rejected.

6. At the outset it may be noted that learned A.P.P. has submitted investigation papers and the most important statement is that of victim herself which came to be recorded on 31.05.2021 by the Judicial Magistrate, First Class, Georai.

7. I have carefully gone through the statement so recorded by the learned Judicial Magistrate and the statement of the victim clearly states that on 12.03.2021 she left for school at about 9.00 a.m. On way to school, the applicant met her. She accompanied him on his motorcycle to a room of his friend and stayed there till 2.30 p.m. As her school hours were till 2.00 p.m., she advised the applicant to run away. They accordingly then proceeded towards Pune by motorcycle and went at Chakan to one Dinesh, friend of the applicant. On 13.03.2021, they went to Vita, District Sangli by bus. There they stayed for a month in the house of friend of the applicant. From there, they went to Mumbai and there they resided for about 20 days at Ulhasnagar. On 01.05.2021, from Ulhasnagar, they were brought by the Police. She further states that she was not forcibly taken, induced or abducted by the applicant rather she told him that if they did not run away, she would end her life. Lastly, she states that she has no complaint against the applicant.

8. The next document is medico legal examination report of the victim wherein she gave the history of running away with the applicant to Pune, Satara, Vita and then Mumbai and got married at Ulhasnagar and stayed there as husband and wife in sexual relations with each other.

9. From the very statement recorded under section 164 of the Criminal Procedure Code by the learned Judicial Magistrate, it is more than clear that it was the victim who on her own went away with the applicant and even advised the applicant to run away otherwise she would put an end to her life. This aspect of conduct of the victim is clear indication to the fact that on the date of alleged incident she had sufficient understanding of the matter. There is absolutely nothing to show whether she was in any way induced or for that matter was taken by force. Even if it may be a fact that she was more than 16 years of age but less than 18 years but certainly appears to have attained the age of understanding.

10. Apart from above, it is not a case wherein something is required to be recovered or discovered at the instance of the applicant. In other words, it is not a case of custodial interrogation and even it would be so then certain conditions can always be imposed on the applicant.

11. Taking over all view of the matter, I am of considered view that the present application deserves consideration and therefore, I am inclined to allow the same.

12. In view of above, I pass following order.

O R D E R

- i. In the event of arrest of the applicant in connection with Crime No.95/2021 registered with Georai Police Station, District Beed for the offences punishable under Sections 363, 376, 376(m) of the Indian Penal Code, 1860 and Sections 4, 6, 8 of Protection of Children from Sexual Offences Act, the applicant is directed to be enlarged on bail on his furnishing P.R. Bond of Rs. 20,000/- [Rs. Twenty thousand only], with one or two solvent sureties in the like amount.
- ii. The applicant shall attend concerned police station as and when called and shall cooperate with the police in the investigation.
- iii. The applicant shall not tamper with prosecution evidence in any manner.

13. The application stands disposed of in the aforesaid terms.

(V. G. BISHT, J.)