

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

934 BAIL APPLICATION NO.961 OF 2021

**GANESH S/O SHANKAR SHINDE @ SANTOSH SHANKAR
SHINDE @ SHAFYA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Shri. V. B. Kulkarni, Advocate for the applicant
Shri. S. W. Munde, APP for the respondent/State
Shri. A. N. Barhate Patil, Advocate for respondent No. 2.

**CORAM : M. G. SEWLIKAR, J.
DATED : 18th NOVEMBER, 2021**

PER COURT :-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No. 717 of 2019 registered with Shirdi Police Station, Dist. Ahmednagar for the offences punishable under Sections 363, 366, 376(2)(N), 506, 34 of the Indian Penal Code and under Sections 3(A), 4, 5(L), 6 of POCSO Act.

2. Victim 'A' is the daughter of the informant aged 17 years and victim 'B' is the niece of the informant aged 17 years. On 3rd July, 2019, these two victims left the house on

the pretext of bringing some articles from hotel. They left with the bags. Informant's sister-in-law enquired with the informant as to why these two victims had not reached the hotel. Despite taking search, these two victims were not traced. Therefore, informant lodged the report in the police Station.

3. Both these victims were traced. During investigation it transpired that applicant and another accused by the name of Shahrukh Mansur Kazi had kidnapped these two victims. It also transpired during investigation that these two victims were taken to Jintur and they stayed with one Imrojbeg Rasulbeg Mirza for ten days. Thereafter, they left his house. It also transpired during investigation that applicant and the said Kazi had sexual intercourse with these two victims. Therefore, offence as aforesaid came to be registered against the applicant and the other accused. It is submitted that the other accused i.e. Kazi is absconding.

4. Heard Shri. Kulkarni, learned counsel for the applicant, Shri. Munde, learned APP and Shri. Barhate, learned counsel for the informant.

5. Learned counsel Shri. Kulkarni submits that both the victims were 17 years of age at the time of the incident. They were aware of the consequences of their act. He further submits that the statement of Imrojbeg Rasulbeg Mirza shows that these two victims along with the applicant and the said Kazi had been to the said Imrojbeg Rasulbeg Mirza for seeking accommodation. He further submits that all of them stayed in the room of Imrojbeg Rasulbeg Mirza for ten days. During the time, both, the applicant and Kazi would go for work and these two victims used to be alone in the house. He submits that the victims had ample opportunity to run away. Despite this they did not do so which clearly indicates that they had voluntarily accompanied the applicant and said Kazi. He submits that medical evidence also does not support the prosecution. He submits that after ten days, both the applicant and Kazi and

victims left Jintur and went to some other place. He submits that all these events clearly indicate that the alleged sexual intercourse was with their consent. The victims are on the verge of attaining majority. Having considered all the circumstances, applicant is entitled to be released on bail.

6. Learned APP Shri. Munde and learned counsel Shri. Barhate submit that the victims were not in consenting age. Applicant is a married man. Despite this he has indulge in such activities. Medical evidence supports the version of the victims that applicant had sexual intercourse with the victims.

7. It is not in dispute that the applicant is a married man. The date of birth of one of the victims is 11th July, 2002 and the date of birth of another victim is 10th August, 2002 whereas the date of incident is 3rd July, 2019 which means both the victims were below 17 years of age at the time of the incident.

8. This clearly shows that victims were not in consenting age. Medical report is produced on record which shows that hymen was ruptured. It also shows that there was evidence of anal intercourse. Considering the evidence of the prosecution, it clearly shows that applicant had indulged in sexual intercourse with the victims. There is evidence on record to show that victims were minor. Since the victims were minors, their consent for sexual intercourse was insignificant. Medical evidence further shows that victim 'A' was subjected to biting and pulling hair. In this view of the matter, I am not inclined to release the applicant on bail. Hence the order.

ORDER

. Application stands dismissed.

[M. G. SEWLIKAR, J.]

ssp