

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

CRIMINAL BAIL APPLICATION NO. 108 OF 2020

Sunny Gyanchand Jain Applicant
Versus
The State of Maharashtra and Anr. Respondents

Mr. Deepak Gautam, for the applicant.
Mr. Ameet A. Palkar, APP for the State/Respondent.

CORAM: SARANG V. KOTWAL, J.
DATE : 31st JULY, 2021
(Through Video Conferencing)

P.C. :

1. Vide previous order dated 17/07/2021, Learned Counsel was directed to add the first informant as a party Respondent and to serve him privately. Amendment was carried out. Learned Counsel for the applicant states that he has effected private service and has already filed an affidavit of service to that effect. By the same previous order dated 17/07/2021, the investigating officer was directed to inform the first informant about pendency of this application and about today's date of hearing. The

investigating officer is present in the Court and he makes positive statement that he has telephonically informed the first informant about pendency of this application and about today's date. Therefore, that requirement is completed. In this situation, I am deciding this application finally.

2. The applicant was arrested on 06/07/2018 in connection with C.R.No. 187 of 2018 registered at MHB Colony Police Station. Initially the offence was registered under section 363 of the Indian Penal Code. Subsequently sections 376(1), 376(2)(j) of the Indian Penal Code and Section and Sections 4,8 and 12 of the Protection of Children from Sexual Offences Act were added.

3. The FIR was lodged by the first informant who is father of the victim. He has stated that his daughter, the victim in this case, was 17 years of age at the time of lodging of the FIR on 12/06/2018. On 11/06/2018, the

informant had left his house at 8.00 a.m. to attend his work. In the evening, at about 7.00 p.m., his son told him telephonically that the informant's daughter had left the house at 11.00 a.m. and thereafter she had not returned. The informant then went to the police station. He expressed suspicion against the present applicant and lodged an FIR under section 363 of the Indian Penal Code. The investigation was carried out and the applicant was arrested on 06/07/2018. Since then he is in custody. The investigation is over and the charge-sheet is filed.

4. Heard Mr. Deepak Gautam , learned counsel for the applicant and Mr. Ameet A. Palkar, learned APP for the State.

5. Learned Counsel for the applicant submitted that the victim's statement itself from the charge-sheet indicates that it was a consensual relationship. He submitted that though the victim was below 18 years of age, as there was love affair between the victim and the

applicant, leniency should be shown to the present applicant. Both of them had eloped together and had resided together.

6. Learned APP opposed this application by submitting that defence of consensual relationship is not valid when the offence is under POCSO or under section 376 of I.P.C. as the victim was minor.

7. I have considered this submission. In this context statement of the victim herself is important. She has stated that she had studied upto 8th standard and then she had left the school. She got acquainted with the applicant about 6 to 7 months prior to the incident. She has categorically mentioned that they had love affair and they wanted to get married. They had not taken that step because she had not attained legally marriageable age. In the meantime, her parents came to know about their love affair. The parents were not accepting this relationship and they had prohibited the victim from

meeting the applicant. The victim's parents; against her wish, were trying to take her to Utter Pradesh. The victim did not want to go there. The applicant had given a mobile phone to the victim, using which, they were keeping in touch secretly. Both of them decided to go to the applicant's city and decided to stay together. The applicant went to his native place and took a room on rent. He came to Mumbai. The victim and the applicant then met each other and decided to elope to his native place in Rajasthan. She has further stated that on 11/06/2018, she met the applicant at Borivali station. Then they went to Rajasthan by a bus. They reached there on 12/06/2018 and since then they started residing together. On 30/6/2018, the applicant told the victim that his saving was getting over. He went to Mumbai to take his money from his friend. He left Rajasthan for that purpose, but thereafter he did not return. On 4/07/2018, the police officers reached the place where the victim was staying and then she was brought back to Mumbai. She has stated that, during their stay together, they had their

physical relations on 8 to 10 occasions.

8. On complete reading of this particular statement, it clearly shows that it was a love affair and consensual physical relations. The victim was compelled to take this step because her parents were trying to send her to U.P. She was very much in love with the applicant and there was no force involved on the part of the applicant. There was no false inducement either. Both of them had eloped together.

9. In this view of the matter, at least for consideration for bail, some lenient view can be taken. The applicant is in custody since 06/07/2018. The trial is not likely to start soon. Therefore, I am inclined to grant bail to the present applicant. Learned Counsel for the applicant states that the applicant is willing to furnish local solvent sureties in this case. His statement is accepted.

10. Hence the following order.

ORDER

- (i) In connection with C.R. No. 187 of 2018 registered with MHB Colony Police Station, Mumbai, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two local solvent sureties in the like amount.
- (ii) The applicant shall attend all the dates in the Court during the trial, unless exempted.
- (ii) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)