

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.490 OF 2021

NANDKUMAR VITTHAL KOLHE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.A.R.Avachat, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

Mr.Tanveer Khan, Appointed Advocate for Respondent No.2.

CORAM : V. G. BISHT, J.

**RESERVED ON : 6th DECEMBER 2021
PRONOUNCED ON : 15th DECEMBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.395 of 2017 registered with Police Station Khed, Pune, for offences punishable under Section 363, 366, 376 of the

AVK

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Indian Penal Code (IPC) and under Sections 4, 6, 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2 Informant is father of victim, who at the relevant time was 14 years old and was a student of Class VIII. On 28th September 2017 the victim, as usual, went to school but did not return home. Her search was carried out but to no avail. On the next day, the informant visited the school and there they came to know from victim's friend that the victim was to elope with the applicant. They visited the applicant's house but he was also not found there. Accordingly, First Information Report (FIR) came to be lodged.

3 Mr.Avachat, learned counsel for the applicant, submits that there is no proof of age. The learned counsel then invited my attention to the statement of various prosecution witnesses to show that applicant and victim stayed together after marrying each other. In such circumstances and the fact that

investigation is completed, the applicant deserves to be enlarged on bail.

4 Mr.Dedhia, learned APP, on the other hand, invited my attention to the statement of victim and vehemently submitted that not only the victim was minor at the relevant time, but the applicant took undue advantage of her age and maintained physical relations and impregnated her. Having regard to the seriousness of offence, the applicant does not deserve to be released on bail.

5 Mr.Tanveer Khan, learned counsel for the informant – father and the victim, also supports the submissions of the learned APP and submits that there being no merit in the application, the same is liable to be rejected.

6 Perused the investigation papers. I have also gone through the statement of prosecution witnesses.

7 First I would like to refer the statement of victim. According to her, she was forcibly taken on a motorcycle by the applicant at Shrigonda, District Ahmednagar, where he tied mangalsutra around her neck against her wish. From there the applicant took her to his uncle's house and told him that he had married her. They stayed there overnight and the applicant forcibly maintained physical relations with the victim. From there she was taken to various places and in all those places, he forcibly maintained physical relations. At last, the applicant left her and went away. She met one Maruti Bhandalkar and narrated the incident and as also the fact of her pregnancy.

8 Next statement is that of Govind Mahadev Jadhav, uncle of the applicant, who also states that on 28th September 2017, the applicant along with victim had visited his house and informed that he had married the victim. They stayed there for a night and on the next day left without informing anyone.

9 From the above it is very much clear that not only the victim was taken away by the applicant on his motorcycle but also to the house of his uncle where he allegedly told his uncle that he had performed marriage with the victim. It is also clear from the statement of victim that she was ravished from time to time, as a result of which she became pregnant.

10 I have also gone through the Medical Certificate. It also gives the same history. It is seen from the said certificate that at the time of examination, she was above 15 years but below 17 years.

11 The learned counsel for the applicant though submitted that there is no proof of age, but the Medical Certificate is nowhere assailed. Even it is also not assailed that at the relevant time the victim was student of Class VIII. Statement of victim coupled with Medical Certificate go a long way to show that the victim got pregnant through the applicant.

12 Having regard to the above material, in my considered opinion, this is not a fit case wherein the applicant can be granted bail. Hence, the following order :

ORDER

Application is rejected.

(V. G. BISHT, J.)