

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

CRIMINAL BAIL APPLICATION NO.16 OF 2021

Sagar Vitthal Kumbhar Applicant
Versus
The State of Maharashtra & Another Respondents

Mr. Vikrant V. Phatate, Advocate for the Applicant.
Mr. Ajay Patil, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.
DATE : 17th MARCH, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.539/2019 registered at Mangalvedha police station, Solapur. Initially the offence was registered under Section 363 of the Indian Penal Code on 21.12.2019. Subsequently, Section 376(2) of IPC and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act were added.

2. Heard Shri Vikrant Phatate, learned Counsel for the Applicant and Shri Ajay Patil, learned APP for the State.

3. The FIR was lodged by father of the victim. The victim was around 15 years of age at the time of lodging of the FIR. It is mentioned in the FIR that the victim was residing with her maternal grandparents at Padolkarwadi. She was studying in 9th standard. She left her house on 19.12.2019. The family members searched for her. She was not found and, therefore, a complaint was given to the police station on 23.12.2019 regarding missing of the victim. Suspicion was expressed against the present Applicant that possibly he had abducted the victim. Subsequently, the victim was found and thereafter the aforementioned Sections were added.

4. Learned Counsel for the Applicant submitted that perusal of the statement of the victim shows that there was a love affair and the victim had willingly left her house. It was the victim who had constantly insisted that they should elope and stay together as husband and wife. The Applicant was in love with her and he only followed what she had suggested. He submitted that leniency be shown to the Applicant for grant of bail.

5. The notice was issued to the first informant. Learned A.P.P. makes a statement and tenders a copy of the document showing that Respondent No.2 was informed by the investigating officer about pendency of this application and he was asked to meet learned A.P.P. The copy of the said document is taken on record and marked 'X' for identification. However, even after the service was effected in this fashion, Respondent No.2 has not appeared and has not engaged any Advocate. Therefore, I am proceeding to decide this case.

6. Learned A.P.P. relied on the investigation carried out in this case. He submitted that though the victim had willingly left her house, she was still below 18 years of age and, therefore, the offence is committed by the Applicant.

7. I have considered all these submissions. While it is true that the victim was below 18 years of age, the statement of the victim is important in this case. She has described in detail as to how she developed friendship with the present Applicant. She has categorically stated that she liked the present Applicant and with her consent they had

physical relations. She has described that the Applicant had given mobile phone on two occasions and she used them for keeping in touch with him. She has stated that her family was aware of all this and she was threatened by her own family that she would be killed by poison if she continued to keep in touch with the Applicant. Her statement shows that she herself had told the Applicant that she would leave her house and meet him, when her parents had gone for the work for cutting sugarcane crop. On 8.12.2019, she herself, left her house and went to Panvel. The Applicant had asked her to meet him at Panvel. She alone went to Panvel to meet him. Then she stayed with him. On the next day, since the villagers were looking after them, then went back. When they went back, the police arrested the Applicant.

8. Considering this statement of the victim, it is more than clear that it was always the victim who was insisting to the Applicant that they should elope and that she was fed up by the threats given by her own parents. Therefore, at this stage, the Applicant's case can be considered sympathetically

for grant of bail. The trial will take its own course and the Applicant can be dealt with in accordance with law during trial. But for consideration of grant of bail, his case can be considered sympathetically in view of the statement given by the victim herself. Hence, the following order :

ORDER

(i) In connection with C.R.No.539/2019 registered at Mangalvedha police station, Solapur, 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 sureties in the like amount.

(ii) The Application stands disposed of accordingly.

Digitally
signed by
Pradeepkumar
P. Deshmane
Date:
2021.03.20
15:13:33
+0530

(SARANG V. KOTWAL, J.)

Deshmane (PS)