

Digitally
signed by
RUPALI
RAJESH
WAKODIKAR
Date:
2021.09.27
15:04:10
+0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2047 OF 2021

Prince Shirish Bhagat	...Applicant
Versus	
The State of Maharashtra and Anr.	...Respondents

Mr. Vaibhav Gaikwad for the Applicant.

Mr. A.A.Palkar, A.P.P for the Respondent-State.

Mr. Aaditya Gore for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.
DATE : 23rd SEPTEMBER, 2021

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R.No. 856 of 2020 registered with the Satara City Police Station, Satara, for the offences punishable under Sections 376, 376(2)(N), 366, 366(A), 504, 506, 107, 34 of the Indian Penal Code r/w Section 4,5 (L), 5(N), 6, 7, 8,9, 10, 11 of the Protection of Children from Sexual Offences Act and Sections 9, 10, 11 of the Prohibition of Child

Marriage Act.

3. Learned Counsel for the applicant submits that the relations between the applicant, aged about 20 years, at the relevant time and the prosecutrix, aged 16 years, were consensual. He submits that infact, the prosecutrix, on her own accord had gone to stay with the applicant and his family. He submits that the prosecutrix's mother had lodged a missing complaint with the Shahupuri police station, as the prosecutrix had gone missing. According to the learned Counsel for the applicant, during the enquiry into the said missing complaint lodged by the prosecutrix's mother, the statement of the prosecutrix was recorded on 17th October 2020, in which she has stated that her parents were harassing her i.e. abusing and assaulting her. She has further stated that now as her parents have promised not to abuse her, she has agreed to go with her parents. The said statement of the prosecutrix is at page No.162 of the application, recorded in the missing complaint lodged by her mother. He further submitted that the statement of the prosecutrix's parents were also recorded in the said missing complaint and the said statements are on page Nos. 164 and 165 of the application. He submits that a perusal of the said statements disclose that they were reprimanding the prosecutrix in order to discipline her and had assured that they will not scold her in future. They also assured not to

assault her. Learned Counsel for the applicant relied on the photograph to show the nature of relationship between the applicant and the prosecutrix.

4. Learned Counsel for the applicant further submits that the prosecutrix's family was against the intercaste marriage and hence, where opposing their relationship. He submits that the applicant is in custody since 31st October 2020 and as such, further detention of the applicant is not warranted. Learned Counsel for the applicant has tendered an affidavit of the applicant, wherein, the applicant has undertaken not to enter Satara City, except for the purpose of attending the Court hearing. He has also undertaken not to contact or induce the prosecutrix or any other witnesses concerned with the said case. The applicant's mother had also filed an affidavit that she would take care of the applicant and that she would ensure that proper treatment would be given to her son for depression and other psychological issues. The said affidavit cum undertakings are taken on record and marked **X-colly**.

5. Learned APP opposes the application. Mr. Gore, Learned Counsel for the respondent No.2 also opposes the application. Mr. Gore submits that presently the prosecutrix is studying in Sangli, whereas, her mother i.e. the complainant is staying in Satara City.

6. Perused the papers. The complainant is the mother of the prosecutrix. According to the complainant, her daughter aged 16 years, was studying in 12th standard and was studying with Alisha (applicant's sister). According to the complainant, in March 2020, her daughter informed her that she was in love with the applicant and as such, went to the applicants house. She has stated that they all went to the applicant's house and discussed with the applicant's mother and maternal aunt. According to the complainant, the applicant's family members told them that they should let their daughter stay with them and that they would get their daughter married to the applicant, after she completed 18 years. The complainant has stated that they told the applicant's family members that their daughter was a minor and that they did not want to get their daughter married to the applicant. According to the complainant, the applicant would call their daughter and threaten, that he would commit suicide and implicate them in the case. The complainant has further stated that the applicant's sister would come and take their daughter to their house and that despite telling her daughter not to go, she was not listening to them.

7. The complainant has further stated that on 17th August 2020, the applicant's mother came to their house and told her daughter that the

applicant was in depression and that, she should come to her house. Accordingly, the applicant's mother took their daughter to her house. The complainant has stated that when she and her husband went to the applicant's house, they saw the applicant putting a ring in her daughter's finger and kiss their daughter, however, due to fear they did not utter a word. According to the complainant, the applicant came to their house with his mother and sister and informed him that they would get Rupees 3,00,000/- if they performed an intercaste marriage. The complainant has stated that the applicant's sister would come and take their daughter and would threaten that if she did not come, they would file a case against them. According to the complainant, whenever their daughter went to the applicant's house, she would return in an intoxicated condition, pursuant to which, there would be a quarrel between them. The complainant has further stated that they had given a new mobile to their daughter for attending lectures, however, the applicant would chat and make video calls on their daughter's mobile and that, when they would pull her up for the same, their daughter would abuse them. The complainant has further stated that on 12th October, 2020, the applicant's sister took their daughter as the applicant was in depression, pursuant to which their daughter did not return home for two days. She has stated that on 15th October, 2020, they went to the applicant's house, however, their daughter did not return to their house,

pursuant to which, she lodged a complaint with the Shahupuri Police Station on 17th October, 2020. Accordingly, the API of the concerned Police Station sent two Police to bring back the complainant's daughter. It appears that when the API inquired with their daughter, their daughter gave a statement against the parents, pursuant to which, the Police told the complainant and her husband not to harass their daughter.

8. Although, learned Counsel relied on the photographs to show the relationship between the parties and the statements of witnesses which support the same, the question of consent does not arise, as the prosecutrix was a minor. The applicant is in custody since 31st October, 2020. Learned Counsel for the applicant has tendered an affidavit cum undertaking duly affirmed before the Circle Jailor, Kolhapur Central prison, Kolhapur. In the said affidavit cum undertaking, the applicant has undertaken not to reside in Satara City; to attend the Court on all dates; not to contact the victim, her parents, her relatives or any other witnesses related to the case; and to stay out of Satara City. Learned Counsel for the applicant states that the applicant will reside in Wai or in Pune. Infact, having regard to the statements made in the complaint, that the applicant was suffering from depression, an affidavit of the applicant's mother was also sought. Accordingly, the applicant's mother - Vijaya Shirish Bhagat

has also given an undertaking stating therein, that she will take care of the applicant; that she will ensure that he does not contact the victim or any other relatives; and that she would give proper treatment to the applicant, as required for his condition.

9. Having considered the peculiar facts of this case, further detention of the applicant, who is aged about 21 years, is not warranted. Accordingly, the application is allowed and the applicant is enlarged on bail on the following terms and conditions;

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the Wai Police Station on the first Saturday of every month between 10:00 a.m. to 11:00 a.m. until further orders, except if the date in the trial Court falls on a Saturday;
- (iii) The applicant shall not enter the jurisdiction of Satara and Sangli Police Station, except in Satara, only on the dates given by the Trial Court;

(iv) The applicant shall inform his latest place of residence and mobile contact number, if any, soon after being released on bail and/or if there is any change of residence or mobile details, time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(vi) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

10. The application is allowed in the aforesaid terms and is accordingly disposed of.

11. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.