

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

CRIMINAL BAIL APPLICATION NO. 1310 OF 2020

Faizan @ Salaman Md. Hashim(Cablewala) Applicant

Versus

The State of Maharashtra

.... Respondent

Ms. Saima Ansari , for the applicant.

Smt. J.S. Lohokare, APP for the State/Respondent.

**CORAM:SARANG V. KOTWAL, J.
DATE:18th FEBRUARY 2021**

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 69 of 2020 registered at Pawar Wadi Police Station, Malegaon, under sections 376(j), 354(I), 342, 323,506 of the Indian Penal Code and under sections 4 and 8 of Protection of Children from Sexual Offences Act. The applicant was arrested on 28/07/2020 and since then he is custody. The investigation is over and the charge-sheet is filed.

2. Heard Ms. Saima Ansari, learned Counsel for the applicant and Smt. J.S. Lohokare, learned APP for the State.

3. The FIR was lodged by the prosecutrix herself on 28/06/2020. She was 17 years and 9 months of age at the time of lodging of the FIR. She has described the incident dated 21/06/2020. She has stated that the applicant was following her and threatening her. So she was forced to keep friendly relations with him. On that particular date, he forced the victim to accompany him to a hall. There he told her that he love her and proposed to her for marriage. She declined. She told him that he was already married and had a daughter. After she declined to accept his proposal, he forcibly committed rape on her. She came home. Initially she did not narrate this incident to anybody because she was apprehensive about her future prospect but finally she told elders in the society and family about the incident. Thereafter this FIR was lodged.

4. Learned Counsel for the applicant submitted that the medical certificate shows that there was no injury and therefore it was a case of consensual relations between the applicant and the informant. She therefore submitted that the applicant be granted bail.

5. Learned APP opposed this application. She submitted that since the victim was below 18 years, consent does not matter and in any case, there is presumption against the present applicant.

6. I have considered these submissions. The FIR itself described the incident. According to the informant herself, it was not a consensual sex. She had already opposed the applicant's proposal. The act was committed against her will and the applicant had used force and had threatened her.

7. In this view of the matter, no case for bail is made out. The application is rejected.

(SARANG V. KOTWAL, J.)