

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 446 OF 2022

Santosh Kachru Jadhav

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

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Mr. C.C. Deshpande, Advocate for applicant

Mr. V.S. Badakh, A.P.P. for respondent no.1 – State

Mr. V.P. Kadam, Advocate for respondent no.2 (appointed through Legal Aid)

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CORAM : R.G. AVACHAT, J.
RESERVED ON : 26th JULY, 2022
PRONOUNCED ON : 02nd AUGUST, 2022

PER COURT :

1. This is an application for bail under Section 439 of Code of Criminal Procedure. The applicant has been arrested in connection with Crime No. 325 of 2021 registered with Karmad Police Station, Dist. Aurangabad for the offences punishable under Sections 363, 366A, 376(2) (n), 376(3) of the Indian Penal Code and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard. Perused the First Information Report ("F.I.R.") and related police papers.

3. The F.I.R. has been lodged by mother of the victim on 07th August, 2021. It is her case that at the time of alleged incident her daughter (victim) was fifteen years of age. On 07th August, 2021 by 12:00 noon, the victim went missing. A search was, therefore, made for her. Ultimately the F.I.R. was lodged alleging that some unknown person has kidnapped her for unknown reason. The crime came to be registered. During investigation of the crime, it was revealed that the applicant and the victim had eloped. They stayed together for near about three months. The victim conceived. She even delivered a baby. The D.N.A. report indicates the applicant to be the biological father of the new born. Since the victim was below eighteen years of age, her consent was immaterial. On investigation of the crime, charge-sheet has been filed.

4. Learned counsel for the applicant would submit that it is a case of emotional involvement. Parents of the applicant are ready to accept the victim as their daughter-in-law. They filed an affidavit on record submitting therein that once the victim attains the age of majority, they would ensure that their son would get married with the victim. Learned counsel, therefore, urged for grant of the application.

5. Learned A.P.P. and learned counsel appointed to represent the victim would, on the other hand, urge for rejection of the application. According to them, the victim is below eighteen years of age. Her consent

was, therefore, immaterial. The offence is made out since D.N.A. report indicates the applicant to be the biological father of the child delivered by the victim.

6. Considered the submissions advanced. The applicant claims to be twenty one years of age. Admittedly, it was an emotional relationship. True, the victim is below eighteen years of age. Both, the applicant and the victim eloped. They stayed together for long. The victim conceived. She even delivered a baby. On the request of the applicant, the victim was requested to appear before the Court. She came alongwith her mother. The victim stated that she would be attaining the age of eighteen years within a couple of months. She would further submit that she is going to marry with the applicant. She urged for grant the applicant bail.

7. Mother of the victim has opposed to grant of bail. The victim was found to be bold. She insisted in presence of her mother for release of the applicant on bail. She reiterated that she would be marrying the applicant once she attains the age of majority. The parents of the applicant have filed their affidavit on record stating therein that once the victim attains the age of majority, they would ensure that their son marries with her. It was also informed that the applicant and his parents are ready to get custody of the new born.

8. The aforesaid facts, coupled with the age of the applicant, leads this Court to grant him bail. In view of the same, the application deserves to be allowed. Hence I pass the following order :-

ORDER

(I) The bail application is allowed.

(II) The applicant be released, in connection with Crime No. 325 of 2021 registered with Karmad Police Station, Dist. Aurangabad for the offences punishable under Sections 363, 366A, 376(2)(n), 376(3) of the Indian Penal Code and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(III) The applicant shall not tamper with the prosecution evidence.

(IV) Fees of Mr. V.P. Kadam, learned counsel appointed through Legal Aid to represent Respondent No2 – victim, is quantified to Rs. 7,000/-

(R.G. AVACHAT, J.)

SSD