IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.820 OF 2022

Kalpesh Madhukar Sonawane (Koli) ..Applicant

Vs.

The State of Maharashtra and anr. ..Respondents

Mr.Joydeep Chatterji, Advocate for applicant
Mr.S.P.Sonpawale, APP for respondent no.1
Ms.Shilpa Avachar, Advocate for respondent no.2 (appointed)

CORAM : R.G. AVACHAT, J.
DATE : JULY 15, 2022

ORDER :-

This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.0072 of 2022 registered with Dondaicha Police Station, Dondaicha, Dist.Dhule.

2. Heard learned counsel appearing for the parties.

3. The FIR has been lodged by the father of the victim. It is his case the victim left house on 25.02.2022 at 09.30 in the morning for college. She, however, did not return home until evening. A search for her was, therefore, made. Her friend Rohini, who had accompanied the victim, told to have returned home in the afternoon

itself. The FIR was lodged against an unknown person. Involvement of the applicant was, however, suspected in the FIR itself.

4. Based on the FIR lodged by the victim's father on 26.02.2022, crime for the offence punishable under Section 363 of Indian Penal Code, was registered. It was investigated as well. Charge sheet has been filed. Statement of the victim was recorded. She has been medically screened as well. Her medical examination report indicates old hymenal tear. The victim gave history of oral and sexual intercourse by the applicant herein.

5. Learned counsel for the applicant would submit that it is a case of consensual relationship. Both applicant and victim were emotionally involved for over one and half years. Both of them had eloped with a view to get married. The applicant is twenty three years of age. The victim claimed to be sixteen and half years old. Her actual age is yet to be proved during trial. Investigation is over. He, therefore, urged for grant of bail.

6. Learned APP and learned counsel representing the victim would submit that it is a serious offence. The victim was below 18 years of age. Her consent is immaterial. Learned counsel

representing the victim took me through the victim's statement recorded under Section 164 of the Code of Criminal Procedure (Cr.P.C.) and two statements recorded under Section 161 of the Cr.P.C. Both of them, ultimately, urged for rejection of the application.

7. Considered the submissions advanced. Admittedly, it is a case of emotional involvement between the applicant and the victim. Both of them had eloped with a view to get married. The victim is stated to be little over sixteen and half years old. Her actual age is to be proved during trial. Both of them went to Kalyan and stayed at a house of the applicant's relation. In one of her statements, the victim stated to have falsely attributed the applicant to have confined her in a room. According to her, she said so since she was annoyed with the applicant as he had sexual intercourse with her against her will. As such, it is a case to pass a test of truth during trial. Considering the age of the applicant and the fact that it was a consensual relationship, I am inclined grant bail to the applicant.

8. Hence, the order:-

(i) The application is allowed.

(ii) The applicant be released in connection with Crime No.0072 of 2022 registered with Dondaicha Police Station, Dist. Dhule, 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 in any manner.

(iv) Fee of learned counsel for respondent no.2 (appointed) is quantified at Rs.6,000/- (Rupees Six Thousand).

[R.G. AVACHAT, J.]

KBP