

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

BAIL APPLICATION NO.941 OF 2022

Rahul @ Gotya s/o Sitaram Mendke ... APPLICANT

VERSUS

The State of Maharashtra & anr. ... RESPONDENTS

.....
Mr. S.J. Salunke, Advocate for applicant
Mr. N.T. Bhagat A.P.P. for respondent – State
Ms Harsha R. Lomte, Advocate for respondent No.2.

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CORAM : R. G. AVACHAT, J.

DATE : 11th AUGUST, 2022.

PER COURT :

Heard. This is an application for bail under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.218/2021, registered at Dindrud Police Station, District Beed, for the offences punishable under Sections 363, 376(2)(n), 376(2)(i), 109 of the Indian Penal Code and Sections 4, 5 and 6 of the Protection of Children from Sexual Offences Act.

2. The First Information Report (F.I.R.) has been lodged by the father of the victim on 20/10/2021, alleging therein that, his 14 year old daughter was kidnapped by some unknown person for some unknown reason. During

investigation of the crime, it was transpired that the applicant and the victim had eloped and went to Karnataka State and stayed together for seven days. When they were traced out, the statement of the victim was first recorded on 25/10/2021, wherein she has stated that she on her own made a call to the applicant herein from the cell phone of her father. She on her own met him and joined with him to Karnataka State. In the said statement, she stated to have not been sexually ravished by the applicant herein. After 9 days of her first statement dated 25/10/2021, she gave another statement, stating therein that, during their stay, the applicant had sexual intercourse with her. It was a statement recorded before members of Child Welfare Committee.

3. Again a statement under Section 164 of the Code of Criminal Procedure is given on 9/2/2022 i.e. three months after the F.I.R. was lodged, wherein she stated the applicant to have kidnapped her and took her to Karnataka State and there he had sexual intercourse with her. In the said statement, the victim gave her age as 16 years. Be that as it may.

4. The learned counsel appointed for respondent No.2 victim and the learned A.P.P. would submit that, the

victim was little over 14 years of age. Her consent was, therefore, immaterial. The applicant had defravoured the victim. The trial Court can be requested to expedite hearing of the case. Both of them, therefore, urged for rejection of the bail application.

5. Considered the submissions advanced. Perused the F.I.R. and the related papers. The applicant is 20 years of age. The father of the victim stated the victim was 14 years of age, whereas the victim gave her age as 16 years while her statement was recorded under Section 164 of the Code of Criminal Procedure. In her first statement, she stated to have on her own made a call to the applicant and joined him to go to Karnataka State. In the said statement, she has specifically stated that the applicant even did not attempt to commit sexual intercourse with her. It is only after 9 days thereafter the victim changed her version and attributed the applicant to have committed rape on her. Thereafter she gave 2 – 3 more statements. Though she was consistent about the sexual assault in her subsequent statement, it appears that truth can only be unravelled during trial of the case.

6. The applicant is just 20 years of age. On investigation, the charge sheet has been filed. The victim in

her first statement admitted to have on her own joined the applicant and stayed together in Karnataka State for 8 – 9 days. Considering these facts and the fact that it will take time for commencement and conclusion of the trial, I am inclined to grant bail to the applicant. Hence the order :

ORDER

- (i) The Bail Application is allowed.
- (ii) The applicant be released in connection with Crime No.218/2021, registered at Dindrud Police Station, District Beed, for the offences punishable under Sections 363, 376(2) (n), 376(2)(i), 109 of the Indian Penal Code and Sections 4, 5 and 6 of the Protection of Children from Sexual Offences Act on his 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) Fees of learned Advocate for respondent No.2 is quantified at Rs.6000/- (Rupees six thousand).

**(R. G. AVACHAT)
JUDGE**

fmp/-