

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

913 BAIL APPLICATION NO.1368 OF 2021

. Mahesh s/o. Hanumant Maskar
Age: 21 years, Occu.: Agri.,
R/o. Devgaon, Tq.Paranda,
Dist.Osmanabad. ..Applicant

VERSUS

1. The State of Maharashtra,
(Through the Police Station
Paranda, Tq.Paranda,
Dist.Osmanabad.)
2. X.Y.Z. ..Respondents

...
Advocate for Applicant : Shri Ganesh J. Kore
APP for Respondent No.1 : Shri S.B.Narwade
Advocate for Respondent No.2 : Smt.Ashlesha Kulkarni h/f.
Shri S.J.Salunke

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CORAM : M.G.SEWLIKAR, J.

DATE: 18th January, 2022

PER COURT :-

1. Heard.
2. Victim is the daughter of the informant. In the night of 4th August, 2021, victim was not seen in the house. Informant realized that the applicant must have kidnapped her as from the recordings in the mobile, it was revealed that the victim had conversation with the applicant. Accordingly, he lodged the

report with the Police on the basis of which Crime No.0273 of 2021 came to be registered in the Paranda Police Station, Dist.Osmanabad, under Sections 363, 366, 376(3), 354(D), 34 of the Indian Penal Code and under Sections 4, 8, 12, 17 of the Protection of Children from Sexual Offences (POCSO) Act.

3. Heard Shri G.J.Kore, learned counsel for the applicant, Shri S.B.Narwade, learned APP for the respondent-State and Smt.Ashlesha Kulkarni, learned counsel holding for Shri S.J.Salunke, learned counsel for the informant - respondent No.2.

4. Shri Kore, learned counsel for the applicant submits that the victim was close to 17 years of age. He submits that the victim herself had gone to the house of the applicant and at her instance, the applicant took her with him. He further submits that victim did not give consent for medical examination. Therefore, there is no evidence of penetrative sexual assault.

5. Shri S.B.Narwade, learned APP for the respondent No.1-State and Smt.Kulkarni, learned counsel for respondent No.2 submit that the victim was minor at the time of the incident. She was not of consenting age. Her statement under Section 164 of the Code of Criminal Procedure states that she was subjected to

penetrative sexual assault. They further submit that medical examination report of the victim shows that the applicant had sexual intercourse with the victim.

6. Charge-sheet is filed. At the time of incident, applicant was 21 years of age. Victim did not give consent for medical examination as she was undergoing menstruation. Therefore, there is not evidence indicating that she was subjected to penetrative sexual assault. Having regard to this and the age of the applicant and the fact that the applicant has no criminal antecedents and he is not likely to flee from justice, I am inclined to release the applicant on bail on stringent conditions. Hence, the order.

ORDER

- i) Bail Application is allowed.
- ii) Applicant be released on P.R.Bond of Rs.25,000/- (Rs.Twenty-five Thousand only) with one solvent surety in the like amount, in connection with Crime No.0273 of 2021, registered with Paranda Police Station, Dist.Osmanabad, under Sections 363, 366, 376(3), 354(D), 34 of the Indian Penal Code and under Sections 4, 8, 12, 17 of the POCSO Act, and on condition that he shall not enter Taluka Paranda till the conclusion of the trial and shall not keep any contact whatsoever with the victim.

iii) Bail Application is disposed of.

iv) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(M.G.SEWLIKAR)
JUDGE

SPT