

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

926 BAIL APPLICATION NO.1463 OF 2021

MAROTI SAHEBRAO CHUNWADE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Ghatol Patil Shahaji B.
APP for Respondents/State : Mr. S.B. Narwade
Advocate for R/2 : Mr. Mohammed Asim Shaikh Saleem
...

CORAM : M.G. SEWLIKAR, J.
DATE : 13th January, 2022

PC.:-

By this application, applicant is seeking his enlargement on bail in connection with Crime No.672/2020 registered with MIDC Waluj Police Station, Aurangabad under Section 363, 366, 376(2)(n), 376(3) of the I.P.C. and under Section 4 and 8 of the POCSO Act.

2. Facts leading to this application can be succinctly stated thus:

3. Informant is the mother of the victim. Age of the victim at the time of the incident was 15 years, 10 months. On 7th December, 2020 the victim left the house on the pretext of attending classes. Since she did not return, missing report was lodged with the police. Police traced the victim. It was revealed during investigation that the victim on her own had gone with

the applicant. From the statement recorded by the Investigating Officer, it reveals that both of them had travelled to many places like Hyderabad, Nanded. After tracing her she was brought back to the MIDC Waluj Police Station, Taluka and District Aurangabad. Thereafter, offence came to be lodged against the applicant under the aforesaid sections.

4. Learned counsel Shri Ghatol Patil submits that victim had herself gone with the applicant on her own volition. He submits that material collected by the prosecution during investigation does not indicate that at any point of time applicant had coerced her, threatened or presurised the victim. He submits that victim was of the age of understanding and was aware of the consequences of her actions. He, therefore, seeks release of applicant on bail.

5. Learned counsel Shri Mohammed Asim submit that the mother of the victim had filed petition for *habeas corpus*. Police traced her and produced before this Court. She was remanded to children's home. She stayed there for four days and then came back to her parents. He submits that the victim was in the custody of the applicant for six months. She was pressurised. Therefore, she was not in a mental state to give any statement against the applicant. When she mustered courage she gave the statement against the applicant. Her statement came to be recorded under Section 164 of the Cr.P.C. before the learned Magistrate. In the said statement she has

stated that she was forced to go with the applicant and she was subjected to sexual assault. He submits that the statement of the victim could not be recorded before filing of the charge-sheet as victim and her mother had been to police station for recording the statement under Section 164 of the Cr.PC. but every time police machinery avoided to record the statement. He submits that applicant has kidnapped the victim and had subjected her to penetrative sexual assault. He, therefore, prayed for rejection of the application.

6. Charge-sheet is filed. On perusal of the charge-sheet, it is seen that the victim initially refused to get herself medically examined. After four days she showed readiness to get herself medically examined. The victim was not of consenting age as she was below 18 years of age at the time of the incident. Her statement under Section 164 of the Cr.PC. was not recorded before filing of the charge-sheet. It does not appear that the mother of the victim complained to any higher officer for not recording the statement under Section 164 of the Cr.PC. immediately. At this stage, learned APP points out that Investigating Officer has submitted the report that the victim was not ready to give her statement before the learned Magistrate. Therefore, there is no force in the submission of the learned counsel Shri Asim that the police machinery was not co-operating for recording the statement before the learned Magistrate. In this view of the matter, since charge-sheet is filed and

considering the age of the applicant i.e. 27 years, I am inclined to release the applicant on bail on stringent conditions. Hence the following order is passed:

ORDER

- I) Application is allowed.
- II) Applicant be released on PR bond of Rs.50,000/- with one solvent surety in the like amount, in connection with Crime No.672 of 2020 under Section 363, 366, 376(2)(n), 376(3) of the I.P.C. and under Section 4 and 8 of the POCSO Act with MIDC Waluj Police Station, District Aurangabad on condition that he shall stay away from Aurangabad District till the conclusion of the trial, except for attending the dates of trial and he shall not establish any contact with the victim till the conclusion of the trial. In case of breach of any of the conditions, State is at liberty to apply for cancellation of bail.
- III) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]