

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1661 OF 2021

Kailas s/o Kishan Kasolkar

Applicant

Versus

The State of Maharashtra

Respondent

Mr. D.M. Shinde, Advocate for the applicant.

Mr. G.O. Wattamwar, APP for respondent/State.

CORAM : M.G. Sewlikar, J.

DATE : 6th JANUARY, 2022.

PER COURT :

1. Heard.

2. It is the case of the prosecution that the victim aged 14 years was kidnapped by the applicant. When the applicant was on his way to Akola, Malegaon police intercepted the motorcycle of the applicant and arrested him. On these allegations, offence under Section 363, 366-A read with section 34 of the Indian Penal Code came to be registered against the applicant.

3. Shri Shinde, learned counsel for the applicant submits that the applicant is 22 years of age. The only allegation is that he had kidnapped the victim. There is no allegation of sexual intercourse. There is no allegation that he had induced the victim to have sexual intercourse with another person. He placed reliance on the judgment in the matter of Iqbal vs. State of Kerala, 2007 DGLS(SC) 1208.

4. Learned APP objected to release the applicant on bail contending that the victim was minor at the time of the incident. There is evidence to show that the applicant had kidnapped the victim to have sexual intercourse. There was inducement and also element of compelling the victim to have sexual intercourse with another person.

5. From the allegations in the First Information Report, it is seen that the applicant had taken the victim out of the lawful keeping of the informant. His motorcycle was intercepted by the police and he was arrested. From the tenor of the First Information Report, it does not appear that there was any inducement on the part of the applicant to have sexual intercourse with him or with any other

person. In the case of Iqbal vs. State of Kerala (supra) it has been observed thus :

9. The residual question is of applicability of Section 366A IPC. In order to attract Section 366A IPC, essential ingredients are (1) that the accused induced a girl; (2) that the person induced was a girl under the age of eighteen years; (3) that the accused had induced her with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse; (4) such intercourse must be with a person other than the accused; (5) that the inducement caused the girl to go from any place or to do any act.

6. Having regard to the law laid down by the Honourable Apex Court, it is clear that at this prima facie stage, a case for bail is made out. There is no allegation of sexual intercourse by applicant himself or compulsion to have sexual intercourse with any other person. Offence under Section 363 is bailable. In view of this, I am inclined to release the applicant on bail. Hence the following order :-

ORDER

- i) Application is allowed.

ii) Applicant be released on PR Bond of Rs.15,000/- (Rs. Fifteen Thousand) with one solvent surety in the like amount in connection with Crime No. 0322/2021 registered with Kalamnuri Police Station, Dist. Higoli, for the offences punishable under Sections 363, 366-A read with Section 34 of the Indian Penal Code, on condition that he shall not enter the village till the conclusion of the trial and shall not keep any contact with the victim.

iii) Application stands 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