

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.786 OF 2021**

Kedar Khajappa @ Rajendra Maske ... Applicant
versus
State of Maharashtra & Anr. ... Respondents

Mr. Ritesh Thobde with Mr. Sagar Tambe, for Applicant.
Mr. A.A.Palkar, APP, for State.
Ms. Vilasini Balsubramaniam, for Respondent No.2.

CORAM : N.J.JAMADAR, J.

**RESERVED ON : 29th JUNE, 2022
PRONOUNCED ON : 13th JULY, 2022**

P.C.

1. The Applicant, a twenty year old boy, has preferred this Application to enlarge him on bail.

2. The Applicant has been arraigned in C.R.No.1262 of 2020 registered with Sadar Bazar Police Station, Solapur, for the offences punishable under Section 363, 366, 376, 376(2)(f), 376(2)(i), 376(2)(j), 376(2)(n), 323, 506 read with Section 34 of the Indian Penal Code and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012.

3. The prosecution case runs as under :

The Respondent No.2 – first informant is the mother of victim, who is 16 years of age. On 23rd December, 2019 the first informant had lodged a missing report at Sadar Bazar Police Station. The victim returned on 26th December, 2019.

Thereupon, the first informant had given a statement that the missing report was lodged on account of misunderstanding and the victim had been to her maternal aunt at Pune. The true state of affairs was, however, as under :

On 23rd December, 2019 the Applicant had enticed away the victim on the pretext of solemnizing marriage. He took the victim to his maternal aunt's home at Kalyan. After a couple of days, the mother and grand mother of the Applicant brought the Applicant and the victim back to Solapur. A meeting of the community members was held. Mr. Satish Mane, the then President of the Community, co-accused No.2, prevailed upon the first informant not to lodge the report as Sumitra, mother of the Applicant and co-accused No.3, agreed to solemnize the marriage of the victim with the Applicant after the victim attained majority. Thereupon, the marriage of the victim was solemnized with the Applicant in accordance with the rites of the community. The victim stayed with the Applicant and co-accused Sumitra for a period of three months. On 19th March, 2020 the victim was turned out of the house of the Applicant. The victim narrated that she was subjected to harassment and the Applicant had forcible physical relations with her representing that, since they were married it would be in order. When the first informant approached the Applicant's mother Sumitra, co-accused No.3; initially she bought time on one or other pretext and later on the accused No.3 flatly refused to solemnize the marriage of the victim with the Applicant. Betrothal ceremony of the Applicant with another girl was

allegedly held. Hence, the first informant lodged a report against the Applicant, his mother Sumitra and Satish Mane, President of the community.

5. At the outset, it would be relevant to note that both Sumitra and Satish Mane were ordered to be released on bail in the event of their arrest by this Court. The Applicant was arrested on 17th August, 2020.

6. The Applicant has preferred this Application asserting that the case of enticing away the victim from the lawful guardianship of the first informant is not made out. The victim had eloped with the Applicant out of her own volition as they were in love. The victim was 16 years of age and had the requisite maturity of understanding, and she had voluntarily surrendered to the physical desire of the Applicant out of love for the Applicant. The investigation is complete for all intent and purpose and no fruitful purpose would thus be served by detaining the Applicant as an under-trial prisoner.

7. I have heard Mr. Thobde, learned Advocate for the Applicant, Mr. Palkar, learned APP for the State and Ms. Vilasini Balsubramanium, Counsel appointed to espouse the cause of Respondent No.2, at some length. With the assistance of the learned Counsel, I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it.

8. The learned Advocate for the Applicant would submit that that the allegations against the Applicant are required to be considered in the context in which

the victim accompanied the Applicant and returned back to Solapur and that it was decided to solemnize the marriage of the victim with the Applicant after the victim attained majority. Moreover, the victim in fact stayed with the Applicant and his mother for a period of three months. In this backdrop, according to Mr. Thobde, the offences punishable under Section 363 and 376 of the Indian Penal Code, cannot be said to have been *prima facie* made out.

9. Mr. Palkar, learned APP, countered the submissions on behalf of the Applicant. It was forcefully submitted that the fact that the victim was barely 15 years of age cannot be lost sight of. Once it is found that the victim was a minor, the submissions based on the alleged consent of the victim lose significance. Mr. Palkar would further urge that in the case at hand, there is medical evidence which lends requisite support to the claim of the victim that she was subjected to sexual exploitation without her consent. Emphasis was laid on the history narrated by the medical Officer.

10. The learned Counsel for the Respondent No.2 supplemented the submissions of the learned APP. It was urged with a degree of vehemence that the fact that the victim stayed with the Applicant for a period of three months is of no relevance, if considered through the prism of minority of the victim. In the circumstances, according to Ms. Balasubramaniam, the submissions sought to be canvassed on behalf of the Applicant based on the alleged consent of the victim do not

deserve countenance.

11. I have carefully perused the statement of the victim recorded on 20th August, 2020 and her statement recorded on 8th September, 2020 by the learned Magistrate under Section 164 of the Code of Criminal Procedure, 1973. The victim informed the learned Magistrate that she had known the Applicant since 6th standard. They had an affair for about three years. On 22nd December, 2019 the Applicant called her near K.R. Photo Studio and therefrom they went to Solapur Railway Station and reached Kalyan on the next morning. They stayed there for three days. The mother of the Applicant brought them back to Solapur. A settlement was arrived at in the presence of the members of the community and it was agreed that the marriage of the victim would be solemnized with the Applicant after the victim attained majority. She stayed at the Applicant's house for three months. During the said period, the Applicant had forcible physical relations with her on 5 to 6 occasions. On 19th March, 2020, the co-accused Sumitra turned her out of the house of the Applicant.

12. The aforesaid material is required to be appreciated in the light of the fact that the victim specifically stated that when she was taken to Kalyan and stayed with the maternal aunt of the Applicant for about three days, the Applicant had not violated her. It was the mother of the Applicant who brought the Applicant and the victim back to Solapur. The Applicant and the victim thereafter stayed under one roof for three months, apparently pursuant to the settlement arrived at in the

presence of the members of the community. It is during this period, the victim alleges, the Applicant had her carnal knowledge forcibly. The medical officer has recorded that the victim claimed that the physical relations were without her consent.

13. Indisputably, the victim was minor when she was allegedly enticed away and deflowered by the Applicant. The submission based on consent of the victim, therefore, does not advance the cause of the Applicant. However, the attendant circumstances cannot be lost sight of. In the case at hand, it seems the victim and the Applicant were sharing romantic relationship for almost three years prior to the occurrence. After the Applicant and the victim eloped, they were brought back by the mother of the Applicant, the accused No.3 herein. It further appears that dispute arose three months after the victim started to reside with the Applicant. Primarily, it seems the disputes were between the victim and the accused No.3 Sumitra. The refusal of the accused No.3 to solemnize the marriage of the Applicant with the victim seems to have acted as a trigger for lodging the report.

14. The aforesaid factors, in my view, cannot be said to be immaterial or inconsequential. They appear to be germane while considering the prayer for bail. Without delving into the aspect as to whether the victim had accompanied the Applicant out of her own volition and surrendered herself to the physical desire of the Applicant out of her love and affection, in the case at hand, the aforesaid attendant circumstances, persuade the Court to lean in favour of exercise of the discretion for

the reasons more than one. Firstly, the victim and the Applicant shared a romantic relationship. Secondly, the Applicant was also not more than 19 years of age at the time of the alleged occurrence. Thirdly, it does not appear that the Applicant acted in a violent manner and took undue advantage of the vulnerable position of the victim. This is vouched for by the claim of the victim that when she had initially accompanied the Applicant to Kalyan, there were no physical relations. Fourthly, the circumstances manifest intent on the part of the Applicant to maintain bond with the victim and thus the victim stayed with the Applicant for three months under one roof. Fifthly, the said arrangement had an imprimatur of the parents of the victim as well.

15. I am mindful of the fact that the aforesaid reasons do not constitute justification for the acts on the part of the Applicant and the co-accused. Nonetheless, these factors appear to be germane for the determination of the entitlement for bail.

16. For the foregoing reasons, I am impelled to exercise the discretion in favour of the Applicant. Thus, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant - Kedar Khajappa @ Rajendra Maske, be released on bail on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the learned Special Judge, Solapur.

(iii) The Applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the victim, first informant and any other prosecution witnesses.

(iv) The Applicant shall mark his presence at Sadar Bazar Police Station on the first Monday of every alternate month for the period of one year or till the conclusion of the trial, whichever is earlier.

(v) The Applicant shall furnish his permanent address and contact details to the Senior Inspector of Sadar Bazar Police Station and intimate the change, if any.

(vi) By way abundant caution, it is clarified that the observations hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and co-accused.

(N.J.JAMADAR, J.)