

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.3460 OF 2021

Mr.Vinayak Dnyandev Gore ... Applicant
Vs.
The State of Maharashtra & Anr. ...Respondents

Mr.Amol Patankar i/b Mr.Ashish Sawant for the Applicant.
Mr.R.M. Pethe, APP for the Respondent –State.
Mr.Shraddha Sawant for Respondent No.2.

CORAM : C.V. BHADANG, J.

**DATE : 7 JANUARY 2022
(Through Video Conferencing)**

P.C.

. This is an application for bail. The Applicant has been charge-sheeted for the offence punishable under Section 363, 366 and 376 read with Section 34 of the Indian Penal Code and Section 4 of the Protection of Children From Sexual Offence Act, 2012 and Section 9 and 10 of the Prohibition of Child Marriage Act, 2006.

2. The prosecution case, as disclosed from the complaint of the mother of the victim, is that on 11 June 2021 at about 11.00 p.m. the victim girl was found missing, from the house. A search of the victim girl was made till 5.00

p.m. in the evening, on the following day. However, she could not be traced. At 5.00 p.m. on the following day, the son-in-law of the complainant sent certain photographs on the whatsapp showing that the victim girl had married with the Applicant, who is a resident of Umre Page, Taluka-Pandharpur, District-Solapur, whereupon enquiry was made with the father of the Applicant, who expressed ignorance in the matter. A complaint was made to the Police on 13 June 2021 at about 9.00 p.m. at Karkam Police Station. According to the complainant an unidentified person brought the girl at the Police Station. The girl has returned to her parents.

3. On the basis of the complaint lodged an offence came to be registered and after investigation a charge-sheet is filed.

4. The record discloses that at the time of the incident the girl was 14 years and 7 months of age. The girl was subjected to medical examination which shows that she has been subjected to sexual intercourse after the purported marriage.

5. I have heard the learned counsel for the Applicant and the learned Additional Public Prosecutor. Perused record.

6. The learned counsel for the Applicant has placed reliance on the decision of this Court in case of ***Sunil Mahadev Patil V/s. State of Maharashtra***¹. It is submitted that the applicant is falsely implicated.

7. It is alternatively submitted that even going by the prosecution case, the girl had attained the age of understanding and had accompanied the Applicant of her own accord and there was also a ceremony of marriage which was undergone, after which according to the prosecution, the girl was subjected to sexual intercourse. It is submitted that there was no allegation that the girl was harmed and quite to the contrary the Applicant is alleged to have entered into marriage with the girl. The learned counsel, however, did not dispute that the girl had not attained marriageable age as per law, nor the age of consent.

8. The learned Additional Public Prosecutor has submitted that the offence is serious as a minor girl was kidnapped and has been subjected to sexual intercourse after

1 2016(3) Bom. C.R. (Cri.) 435

a purported marriage which cannot be said to be marriage in the eyes of law.

9. I have carefully considered the rival circumstances and the submissions made.

10. This Court in the case of ***Sunil Mahadev Patil (supra)***, was concerned with more or less similar facts. In that case, the prosecutrix was aged 15 years, while the accused was 20 years old. From the statement of the prosecutrix and the witnesses, it was revealed that both of them were in love with each other and the girl had eloped with the accused and they had garlanded each other in a temple i.e. a ceremony in the nature of marriage.

11. This Court considering the over all circumstances, and particularly the changed social context has observed thus, in paragraph 10:

“10. The offence of rape can be distinguished on the basis of the intention of the accused. There are incidents of rapes committed by gang like the case of Nirbhaya or Maya Thagi or Mathura which cannot be forgotten by Indian Society. So also rape committed in a savage manner or repeatedly by a single accused. There are some instances of rape which take place as a man wants to satisfy his lust and animal within him overpowers his reason. There

are instances of rape where a man and a woman both are in love with each other and get involved into sexual relationship due to either physical or psychological need and in such type of rape, there is no violence which exists in other types of rape.

12. This Court has further held thus in paragraph 12 of the Judgment:

“12. The overall considerations while deciding such applications can be summed up as -

When a boy and a minor girl are in love with each other and chose to live together without consent of their parents, then the following factors are to be considered:

(i) What is the age of the prosecutrix, who is minor.

(ii) Whether the act is violent or not.

(iii) Whether there are antecedents or not.

(iv) Whether the offender is capable of repeating the Act or not.

(v) Whether there is likelihood of threats or intimidation, if at all the boy is released.

(vi) Whether any chance of tampering with the material witnesses when their statements are recorded.

(vii) It is also to be taken into account in such cases that a boy in his early 20's

deserves to get employment and to plan, stabilize and secure his future.

In the circumstances, this Court proceeded to grant bail.

13. Coming to the present case, the girl was on the verge of attaining 15 years of age and the Applicant was 20 years of age on the date of incident.

14. In this case, the investigation is complete and the charge-sheet is filed the Applicant was arrested on 16.06.2021 and is in custody since then. In the circumstances, I find that further detention of the Applicant pending trial is not necessary.

15. In the circumstances, the following order is passed.

ORDER

(i) The applicant be released on bail, on executing a P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties, in the like amount.

(ii) The applicant shall not directly or indirectly make any attempt to contact or to

influence the victim or any other prosecution evidence/witnesses.

(iii) The Applicant shall not make any attempt to contact the victim.

(iv) In the event of breach of the said condition, liberty to the prosecution to apply for cancellation.

(v) Bail bonds to be furnished before the learned Special Judge.

(vi) The Criminal Application is disposed of in the aforesaid terms.

C.V. BHADANG, J.