

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.155 OF 2021

RAGHUNATH BHANUDAS KAMBLE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.Aniket Nikam, Mr.Amit Icham, Mr.Ashish Satpute, Mr.Piyush ?

Toshnival i/b. Mr.Vivek Arote, Advocate for the Applicant.

Ms.Pallavi Dabholkar, APP for the Respondent – State.

Mr.Aniesh Jadhav, Appointed Advocate for Respondent No.2.

CORAM : V. G. BISHT, J.

**RESERVED ON : 15th DECEMBER 2021
PRONOUNCED ON : 20th JANUARY 2022**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.1122 of 2020 registered with Police Station Chaturshrungi, Pune, for offences punishable under Section 363,

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366-A, 376(2)(n), 354-D, 506 of the Indian Penal Code (IPC) and under Sections 3, 4, 5(1), 6, 11, 12 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2 Informant is a maid and on 21st July 2020 along with victim aged 15 years had been to Chaturshrungi, Shivaji Nagar, Pune, to attend the domestic work. However, the victim, under the pretext of abdominal pain, left the house at 1.30 p.m. Since she did not return till late evening, the informant-mother lodged First Information Report (FIR) alleging therein that the victim has been kidnapped from her lawful guardian by some unknown person for some unknown reasons.

3 It appears from the record and more particularly from the statement of the victim dated 23rd July 2020 that she is acquainted with the applicant – a neighbour. According to her the applicant had expressed his love to her many times in the year 2018. However, she was reluctant. Later on, the applicant got married. Her statement further shows that on 13th September

2019 the applicant called her at his residence and again expressed his love for her and told that he cannot leave her and rather would maintain her despite being married. She then alleges that the applicant then maintained physical relations forcibly. Thereafter also he repeated the said act 3 to 4 times. According to her, on 21st July 2020 the applicant telephoned her and asked her to join his company and accordingly, on the pretext of having abdominal pain, she left the company of her mother. She was taken by the applicant to his brother's house at Kothrud. Later on, when the applicant's sister-in-law came to know about the lodging of report by the victim's mother, the victim was dropped at bus stop. From there she rang up her parents and was taken back to house.

4 Mr. Aniket Nikam, learned counsel for the applicant, submits that the applicant, at the relevant time, was 16 years old and had attained the age of understanding and despite knowing that the applicant was married, not only she maintained physical relations but on her own accompanied the applicant to the house

of the applicant. The learned counsel also invited my attention to the Medico Legal Examination Report pertaining to the victim and more particularly the history of incident given by her to the concerned Medical Officer. According to the learned counsel the history so given also shows the consensual sexual relation between the applicant and the victim. Investigation is over and charge-sheet has been filed. There are no criminal antecedents. In such circumstances, the applicant deserves to be released on bail, argued learned counsel.

5 Ms.Pallavi Dabholkar, learned APP, on the other hand, opposed the submissions by contending that the victim was minor at the relevant time, and therefore, her consent, if any, is totally immaterial. The learned APP also placed reliance on the Medico Legal Examination Report of victim and submitted that having regard to the nature of offence, the applicant may not be enlarged on bail.

6 Mr. Aniesh Jadhav, learned counsel for the respondent no.2-informant, supported the submissions as raised by the learned APP and submitted that there being no merit in the application, the same is liable to be rejected.

7 Perused investigation papers. There is no dispute that at the time of incident the victim was a minor girl. It is also clear from the statement of victim and as also the medical history given by her to the Medical Officer at the time of her examination that there was consensual relationship between her and the applicant and she herself had eloped with the applicant.

8 Be that as it may, the fact remains that the victim was a minor girl at the time of the incident. Therefore her consent becomes immaterial. She was subjected to sexual assault albeit consensual but having regard to her minority, that will have to be looked into by the trial Court at the time of trial and its consequences thereof.

9 I am also mindful of the fact that the investigation is over. Charge-sheet has been filed. There are no criminal antecedents. The trial may take its own time. Till then, it is not desirable that the applicant be allowed to remain behind the bars. Therefore, I am inclined to allow the application. Hence, I pass the following order :

ORDER

- (i) Applicant – Raghunath Bhanudas Kamble shall be released on bail in Crime No.1122 of 2020 registered with Police Station Chaturshrungi, Pune, on his executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.
- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall attend the Court proceedings regularly.
- (iv) Bail before the trial Court.

- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (vii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)