

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1407 OF 2022

Faizal Sikander Shaikh .. Applicant

Versus

The State of Maharashtra & Anr. .. Respondent

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Mr.Vivek M. Punjabi for the Applicant.

Ms.Rutuja Ambekar, A.P.P. for the State/Respondent.

Mr.Subir Sarkar for the Intervenor.

PSI Dilip Deshmukh, attached to Kalyan Taluka Police Station,
present.

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CORAM: BHARATI DANGRE, J.

DATED : 26th SEPTEMBER, 2022

P.C:-

1. The applicant came to be arrested by Kalyan Taluka Police Station on 20/08/2021 on being arraigned as an accused in C.R.No.I-460 of 2021, which invoke the offences punishable under Sections 376(3) of the Indian Penal Code, Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(1)(w)(i), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

2. The subject C.R. came to be registered on a complaint filed by the prosecutrix, who on the day of lodging of the complaint, was aged 17 years 11 months and 30 days.

She narrated that she was residing with her family on the given address and was acquainted with the applicant, who was resident of the same village. She developed friendly relationship with him and one day, according to her, the applicant proposed her and expressed his love for her. However, she declined the proposal by saying that they both belong to different castes and, therefore, it is better that they are separated.

She narrated that during Diwali of the last year, she was working in CNG Gas company, where the mother of the applicant was also working and the applicant also joined. Once again, he attempted to establish proximity with her, but despite her efforts to stay away from him, she fell in love with him and after some days, he left the work in the company, but continued to visit her. On passage of time, she was called at different places by him and it is alleged that he threatened her that if she did not permit establishing physical relationship, he would commit suicide and, therefore, assuming the consequences, the physical relationship was established on 5 to 6 occasions. This of-course was a clandestine affair, but when the applicant started harassing her and demanding to meet frequently, she informed about the happenings in the past to her parents and the complaint came to be filed.

3. On perusal of the material compiled in the charge-sheet, which include the statements against the present applicant, the prosecution case has clearly surfaced on record.

The charge-sheet would reveal that the prosecutrix was one day short of 18 years, when she lodged the complaint. The complaint is lodged about the incidents that had taken place in the past and she has categorically stated that she had fallen in love with the applicant and only on the threat that, he will commit suicide, she had consented for maintaining sexual relationship. Her medical examination reveals presence of old healed hymen tear and, therefore, the sexual relationship cannot be doubted.

4. The only question which arise for consideration is, whether her consent was free or not. The prosecutrix herself has stated that she was in love with the applicant and without giving details about the actual dates, when the physical indulgence happened between the two, vaguely it is referred to as 5 to 6 months before. The complaint is lodged at a belated stage and on considering the version of the prosecutrix, it can be clearly inferred that she is capable of understanding the consequences of her act. Whether she consented for maintaining physical relationship of her free volition or it was against her will, will ultimately determined during the course of trial.

The applicant is a young boy, aged 20 years and he need not be incarcerated, when the investigation is complete and the charge-sheet has been filed. He is, however, subjected to the condition that he shall not make any attempt to establish contact with the prosecutrix and such an attempt being pointed out, his liberty shall be curtailed.

Hence, the following order.

: **ORDER** :

- (a) Application is allowed.
- (b) Applicant -Faizal Sikander Shaikh shall be released on bail in connection with C.R.No.I-460 of 2021 registered with Kalyan Taluka Police Station, Thane Rural on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.
- (c) The applicant shall mark his attendance before the concerned police station on first Monday of every month between 10.00 a.m. to 12 noon till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.
- (d) The applicant shall not make any attempt of whatsoever nature to establish contact with the prosecutrix and such an attempt on his part, would result in revocation of his liberty.
- (e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.
- (f) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(SMT. BHARATI DANGRE, J.)