

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

BAIL APPLICATION NO. 3114 OF 2021

Arvind Sunil Nikam

..Applicant

v/s.

The State of Maharashtra .

..Respondents

Mr. V.S.Tiwari a/w. Priya Mutupand i/b. Priti Tiwari for the Applicant.
Mrs. A.A.Takalkar, APP for the State.

CORAM : ANUJA PRABHUDESSAI,J.

DATED : 1st APRIL, 2022.

P.C.

1. This is an application for bail filed under Section 439 Cr.P.C. by the aforesaid applicant, who is facing trial in Sessions Case No. 202 of 2021 for offences under Section 376, 420, 427, 323, 506 of IPC.
2. Mr. Tiwari, learned Counsel for the Applicant states that the relationship was consensual and that the Applicant has not committed any crime.
3. Per contra, learned APP states that the Applicant had relationship with the prosecutrix when she was a minor. She further states that the medical report shows that the prosecutrix was pregnant and that the Applicant has refused to marry her.
4. I have perused the records and considered the submissions advanced by the learned Counsels for the respective parties.

5. The aforesaid crime was registered pursuant to the first information report lodged by the prosecutrix on 23.02.2021. The prosecutrix claims that she was acquainted with the Applicant through social media. The acquaintance turned into love relationship and that they had sexual relationship on different dates at different places. The prosecutrix claims that she was pregnant in the year 2020 and that the Applicant had given her some medication to terminate her pregnancy. The FIRs reveal that the prosecutrix had physical relationship with the Applicant even after termination of pregnancy. The prosecutrix was pregnant again in the month of February 2021. The FIR reveals that the Applicant has refused to marry her and for this reason she has lodged a complaint alleging that the Applicant has had sexual relationship with her under a promise of marriage.

6. The first information report itself indicates that the relationship between the prosecutrix and the Applicant was consensual. She has not specified the date or the year in which they first had sexual relationship, and as such prima facie there is no material on record to indicate that the Applicant had relationship with her when she was a 'child' within the meaning of Section 2(d) of POCSO Act.

7. As stated earlier, the prosecutrix was 20 years of age as on the date of lodging FIR. The relationship was consensual. Hence, charge under Section 376 is prima facie not made out. The Applicant is already in custody since 23.02.2021. Though the chargesheet is filed, charge is

not yet framed and considering the large pendency, the trial is not likely to commence in the immediate future. The Applicant is a resident of Kalyan and there is no possibility of the Applicant absconding or thwarting the course of justice.

8. Under the circumstances, the Applicant is entitled for bail. Hence, the Application is allowed on the following terms and conditions:-

Sessions Case No. 202 of 2021 for offences under Section 376, 420, 427, 323, 506 of IPC

(i) The Applicant who is facing trial in Sessions Case No.. 202 of 2021 arising out of Crime No. 39 of 2021, for offences under Section 376, 420, 427, 323, 506 of IPC registered with Kulgaon Police Station, be released on bail on furnishing cash bail of Rs.30,000/- (Rupees Thirty Thousand Only) for a period of six weeks;

(ii) The Applicant shall within the said period of six weeks furnish Bail Bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two solvent sureties in the like amount, to the satisfaction of the Sessions Court;

(iii) The Applicant shall report to the Investigating Officer or Sr. P.I. of the Kulgaon Police Station, once in every two months, on the first Monday until further orders;

(iv) The Applicant shall attend all the dates before the Sessions Court till conclusion of the trial.

(v) The Applicant shall not interfere with the complainant or the other

witnesses, or tamper with the evidence in any manner;

(vi) The Applicant shall provide his permanent as well as temporary address, if any, and his contact details to the Investigating Officer ;

(vii) The Applicant shall not change his residential address without prior intimation to the Investigation Officer.

PRASANNA P
SALGAONKAR
Digitally
signed by
PRASANNA P
SALGAONKAR
Date:
2022.04.06
17:26:47
+0530

(ANUJA PRABHUDESSAI, J.)