

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3475 OF 2021

DEVIDAS PANDIT BOSARE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Akshay Bankapur, Advocate for the Applicant.

Smt.Anamika Malhotra, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

RESERVED ON : 10th 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.I-47 of 2020 registered with Police Station Peth, Nasik, for offences punishable under Section 376(2)(n) and 506 of the Indian Penal Code (IPC).

AVK

1/5

2 The prosecutrix and applicant are from the same village. The prosecution alleges that on 28th November 2019, at about 1.30 p.m., the applicant called the prosecutrix at Chaura Malran and expressed his love for her. However, the prosecutrix refused to acknowledge the same and replied that she would tell his name to her parents. The prosecution further alleges that the applicant then tied both hands and then forcibly ravished her. Thereafter he threatened her with death if she disclosed the incident to anyone. The prosecution further alleges that thereafter again and from time to time under the assurance that he would marry her, sexually exploited the prosecutrix, as a result of which she became pregnant. Later on, applicant refused to marry her. The First Information Report (FIR) accordingly came to be lodged.

3 Mr.Akshay Bankapur, learned counsel for the applicant, submits that the prosecutrix not only was major at the time of the incident but voluntarily agreed for sexual encounters. The learned counsel also invited my attention to various

love letters filed on record and written by the prosecutrix to the applicant and then forcefully submitted that those love letters in itself go to show the relation between the prosecutrix and the applicant. Investigation is over and charge-sheet has been filed. There are no criminal antecedents. In such circumstances, the applicant deserves to be enlarged on bail.

4 Smt. Anamika Malhotra, learned APP, on the other hand, opposed the submissions by contending that the age of the prosecutrix, at the relevant time, was 19 years, and having regard to her age and the fact that she was exploited sexually under the promise of marriage, the applicant does not deserve to be enlarged on bail.

5 Perused the investigation papers. I have also gone through various love letters written by the prosecutrix to the applicant. There is no dispute that at the time of incident the prosecutrix had attained majority. If the FIR is read carefully, then it would appear that the first incident which allegedly took

place on 28th November 2019, had taken place after both hands of the prosecutrix were tied by the applicant, and thereafter, from time to time, both of them maintained physical relations albeit under the promise of marriage. A stray statement is made in respect of promise of marriage by the prosecutrix. She appears to be a consenting party.

6 Having regard to the material on record and the fact that investigation is completed leading to the filing of charge-sheet, no purpose would be served by keeping the applicant behind the bars. Hence, I pass the following order :

ORDER

- (i) Applicant – Devidas Pandit Bosare shall be released on bail in Crime No.I-47 of 2020 registered with Police Station Peth, Nasik, on his executing P.R.Bond in the sum of Rs.20,000/- 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.)