

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3719 OF 2021**

Ritesh Ravindra Landge ... Applicant
versus
The State of Maharashtra & Anr. ... Respondents

Mr. Abhay A. Jadhavar, for Applicant.
Ms. P.N.Dabholkar, APP, for State.
Mr. Udayan Shah, appointed Advocate for Respondent No.2.

CORAM: N.J.JAMADAR, J.

**RESERVED ON : 5th JULY, 2022
PRONOUNCED ON : 15th JULY, 2022**

P.C.

1. By this Application under Section 439 of the Code of Criminal Procedure, 1973, the Applicant seeks his release on bail in C.R.No.10 of 2021 registered with Sanghavi Police Station. The Applicant is arraigned in the above crime for the offences punishable under Sections 363, 376(2)(n) of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. The indictment against the Applicant runs as under :

Respondent No.2 – the first informant resides at Sanghavi, Pune along with his wife and daughter who was 15 years and 11 months of age at the time of the alleged occurrence. On 8th January, 2021 the first informant's daughter (victim) left the home at about 8.30 p.m., and did not return. The first informant initially lodged a report for the offence punishable under Section 363 i.e. kidnapping the victim from the

lawful guardianship by enticing away the victim, against an unknown person. On 27th January, 2021 the Applicant and the victim were apprehended near Sahyadri Hotel, Phursungi. Thereupon, it transpired that the victim had known the Applicant from her school days. They had an affair. The Applicant repeatedly expressed his desire to marry the victim. On 8th January, 2021 the Applicant called the victim out of her home. The Applicant was waiting near the house of the victim. The Applicant asked her to board a Maruti Alto Car. The Applicant took her to Phursungi, Hadapsar without giving any intimation to her. When the victim questioned, the Applicant assured her that they would solemnize marriage within two days and thereafter return home. On 10th January, 2021 at about 11.00 p.m., the Applicant allegedly had forcible physical relations with the victim. When the victim insisted to return to her home, the Applicant told her that since he was working at a Washing Centre at Phurusangi, they shall stay thereat as he intended to solemnize marriage with her.

3. The Applicant allegedly had physical relations with the victim on multiple occasions till 25th January, 2021 by giving promise of marriage. On 27th January, 2021 when the Applicant and the victim came out of the room and were strolling near Sahyadri Hotel, they were apprehended by the police. Hence, the Applicant came to be arraigned for the aforesaid offences.

4. I have heard Mr. Jadhavar, learned Advocate for the Applicant, Ms. Dabholkar, learned APP for the State and Mr. Shah, learned Advocate appointed for

the Respondent No.2, at some length. With the assistance of the learned Advocates for the parties, I have perused the material on record, including the statement of the victim recorded under Section 164 of the Criminal Procedure Code, 1973.

5. The learned Advocate for the Applicant strenuously submitted that the victim had accompanied the Applicant on her own and the Applicant had neither used force, nor enticed away the victim. Thus, the charge of kidnapping is prima facie untenable. Support was sought to be drawn from the fact that at the time of the occurrence, the victim was 15 years and 11 months of age. It was urged that the victim had sufficient maturity of understanding to appreciate the nature and consequences of the act she was indulging in. Mr. Jadhavar further urged that the fact that the victim stayed with the Applicant from 8th January, 2021 to 27th January, 2021 vouches for the voluntariness of the victim to surrender to the desire of the Applicant out of her love and affection towards him. Conversely, it rules out any element of forcible physical relations. As the Applicant was barely 19 years of age, at the time of the alleged occurrence, the Applicant deserves to be enlarged on bail.

6. Per contra, the learned APP stoutly submitted that there is no material to indicate that the victim had accompanied the Applicant on her own and had surrendered to the desire of the Applicant out of love and affection as claimed by the Applicant. On the contrary, the statements of the victim recorded by the police as well as by the learned Magistrate under Section 164 of the Code, show that the victim was

ravished against her wish. Therefore, the Applicant does not deserve the exercise of discretion.

7. The learned Advocate who was appointed to espouse the case of the Respondent No.2, would submit that the claim for bail based on consent of the victim who was admittedly below 16 years of age, is otherwise not tenable. That apart, in the facts and circumstances of the case, consensual nature of the act is not prima facie made out.

8. In the light of the aforesaid submissions, I have perused the material on record. In the backdrop of the nature of accusation and the sequence of events, the prosecution case primarily rests upon the version of the victim. In her statement recorded on 27th January, 2021, immediately after she was apprehended along with the Applicant, the victim categorically states that she was taken to Phurusangi in a Maruti Alto Car without informing her. The victim claimed to have questioned the Applicant when she entered the room, which was taken on license by the Applicant, and thereupon the latter assured her that they would solemnize marriage within a couple of days and, thereafter, return home. Couple of days thereafter, according to the victim, the Applicant ravished her without her consent. Till 25th January, 2021, the Applicant allegedly had forcible physical relations with her without her consent by giving promise of marriage.

9. In her statement recorded before the learned Magistrate under Section

164 of the Code, the victim reiterated that the Applicant took her to Phurusungi by Maruti Alto Car after drawing her out of her home on the pretext that he wanted to speak to her. The Applicant expressed desire to marry her. She replied that she had yet not attained the marrigable age. Yet the Applicant had forcible physical relations with her without her consent till 25th January, 2021. The Applicant did not heed her request to drop her at her home.

10. The aforesaid statements of the victim do indicate that the Applicant and the victim had known each other since the school days and they had developed an intimacy.

11. The learned Advocate for the Applicant would urge that the fact that the victim accompanied the Applicant on 8th January, 2021 and they stayed as a couple in a room at Phurusungi till 27th January, 2021, prima facie leads to an inference that the victim fully knew the import of the act she was indulging in. Reliance was placed on the judgments and orders passed by this Court in the case of Anirudha Radheshyam Yadav V/s. State of Maharashtra¹; Sunil Mahadev Patil V/s. State of Maharashtra²; Ganesh Prakash Jundhare V/s. State of Maharashtra and Anr.,³ and Raghunath Bhanudas Kamble V/s. The State of Maharashtra and Anr.⁴ to bolster up the submission that where the victim has sufficient maturity of understanding to appreciate the nature

1 Cri. Bail Application No.2632 of 2019 dated 9th Jan. 2020

2 ABC 2016 (I) 34 Bom.

3 BA 318 of 2022 dt. 14th June, 2022

4 BA 155 of 2021 dt. 20th

and consequences of the act, the Court can exercise the discretion by granting bail.

12. I have perused the aforesaid orders. In the case of Anirudha Radheshyam Yadav (supra), the learned Single of this Court after adverting to the pronouncement in the case of S. Varadarajan V/s. State of Madras⁵, held that the principle in the said case, prime facie, governed the facts of that case. The observations in paragraph 3 are material and, hence, extracted below :

“3. In the case in hand, the victim was 14 years and 11 months old on the date of incident; whereas the applicant was 25 years of old. It appears from the victim’s statement that on 18th April, 2019 at 1.00 a.m., she had left her parents’ house secretly with her belongings to go to the accused and thereafter, they had travelled from one place to another, right from Mahableshwar to Bhusawal and thereafter, to Delhi. Her statement shows that on 22nd April, 2019, she left with the complainant for two days to go to Gajipur, UP, the village of the Applicant, where she was persuaded by the relative of the applicant to return back to home and thereafter, both had returned to Mumbai. The said description of facts do not even remotely suggest that the Applicant had ever induced and/or forced the victim to leave her parents’ house. Thus, prima facie, the ratio laid down in the S. Varadarajan’s case (supra) is applicable to the case in hand.”

13. In the case of Sunil Mahadev Patil (supra), another learned Single Judge of this Court has noted the factors which should weigh with the Court in exercising the discretion to grant bail. The observations in Paragraphs 12 and 13 are instructive and, hence, extracted below :

⁵ Madras AIR 1965 942

“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.

13. In the present case, the prosecutrix is 15 years old and the accused is 20 years old. It appears from the record, statement of the prosecutrix and witnesses that they were in love with each other, so they eloped and went to the temple. There they garlanded each other and according to them, they performed marriage and thereafter, they started residing together in the house of their relative. In between prosecutrix called her distant aunt and requested her to make arrangement of some money and she disclosed that she is married and wants to stay with applicant/accused. In this case there are many mitigating factors.”

14. In the very nature of things, the exercise of discretion to grant bail is fact based. Slight distinction in facts makes a world of difference. Evidently the aforesaid factors bear upon the determination as to grant bail. However, it cannot be laid down

as a broad proposition of law that whenever a minor girl accompanies a person and eventually they end up having physical relations, the ingredients of the offence of kidnapping are ruled out. S. Varadarajan (supra) cannot be construed to such an extreme extent.

15. A useful reference, in this context, can be made to a judgment of the Supreme Court in the case of Anversinh @ Kiransinh Fatesinha Zala V/s. State of Gujarat⁶, wherein the position in law in the context of the judgment of the Supreme Court in the case of S. Varadarajan (supra), was expounded by the Supreme Court. The observations in Paragraphs 17 and 18 are material and, thus, extracted below :

“17. The ratio of S. Varadarajan (supra) although attractive at first glances, does little to aid the appellant’s case. On facts, the case is distinguishable as it was restricted to an instance of “taking” and not “enticement”. Further this Court in S. Varadarajan (supra) explicitly held that a charge of kidnapping would not be made out only in a case where a minor, with the knowledge and capacity to know the full import of her actions, voluntarily abandons the care of her guardian without any assistance or inducement on the part of the accused. The cited judgment, therefore, cannot be of any assistance without establishing; first, knowledge and capacity with the minor of her actions; second, voluntary abandonment on part of the minor; and third, lack of inducement by the accused.

18. Unfortunately, it has not been the appellant’s case that he had no active role to play in the occurrence. Rather the eye witnesses have testified to the contrary which illustrates how the appellant had drawn the prosecutrix out of the custody of her parents. Even more crucially, there is little to suggest that she was aware of the full purport of her actions or that

6 AIR 2021 SC 477

she possessed the mental acuties and maturity to take care of herself. In addition to being young, the prosecutrix was not much educated. Her support of the prosecution version and blanket denial of any voluntariness on her part, even if presumed to be under the influence of her parents as claimed by the appellant, at the very least indicates that she had not thought her actions through fully.”

16. The learned Advocate for the Applicant submitted that the victim’s version that the physical relations were without her consent is belied by the history recorded by the Medical Officer during the course of her medico legal examination. The victim allegedly narrated before the Medical Officer that the sexual relations were with consent. I am mindful of the fact that since the victim was barely 16 years of age, the aspect of consent may not be of significance and may even be said to be wholly immaterial. However, the attendant facts deserve to be taken into account.

17. Firstly, the victim claimed that she had known the Applicant since four years prior to the occurrence. The Applicant had repeatedly expressed desire to marry her. They were in a romantic relationship. The Applicant was also barely 19 years of age.

18. Though the learned APP laid emphasis on the fact that the victim had claimed that the Applicant had physical relations with her without her consent, yet the fact that the victim and the Applicant stayed in the premises, taken on license, for more than 15 days i.e. 8th January, 2021 to 25th January, 2021 cannot be lost sight of. It

is not to suggest that thereby an inference can be drawn that the victim has had opportunities, during the said period, to get herself freed from the clutches of the Applicant, but to underscore the fact that the victim probably had the maturity of understanding to appreciate the nature of the relationship which she shared and the surrounding circumstances. In the FIR, the victim stated that they decided to take a stroll as she got bored staying inside the said room for all those days. Thereupon, the police apprehended them.

19. The aforesaid factors, if considered in a proper perspective, would indicate that the considerations delineated in the case of Sunil Mahadev Patil (*supra*) appear to have been, *prima facie*, made out in the case at hand. Firstly, the victim was almost 16 years of age, and possessed level of understanding commensurating with that age. Secondly, the Applicant was 19 year old. Thirdly, there is no material to indicate that the Applicant acted in a violent manner. Fourthly, there are no antecedents which preclude the Court from exercising the discretion in favour of the Applicant. Fifthly, the apprehension on the part of the prosecution can be taken care of by imposing appropriate conditions.

20. All these factors, if considered through the prism of the relationship of years, which the victim and the Applicant shared, persuade the Court to exercise the discretion in favour of the Applicant. The fact that the Applicant is in custody for almost one and half years also bears upon the determination.

21. Hence, the following order :

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant – Ritesh Ravindra Landge be released on bail in C.R.No.10 of 2021 registered with Sanghavi Police Station for the offences punishable under Sections 363, 376(2)(n) of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the learned Special Judge, Pune.
- (iii) The Applicant shall furnish his permanent address and contact details to the Police Inspector, Sanghavi Police Station and intimate the change if any.
- (iv) The Applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the victim, her family members and any other prosecution witnesses.
- (v) The Applicant shall mark his presence at Sanghavi Police Station on the first Monday of October, January, April and July every year in between 10.00 a.m. to 1.00 p.m. for a period of two years or till the conclusion of the trial whichever is earlier.
- (vi) The Applicant shall not enter the limits of Navi Sanghavi, Pune for the period of one year from today, except for the purpose of marking his presence at

Sanghavi Police Station.

(vii) By way abundant caution, it is clarified that the observations hereinabove are confined to the consideration of entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the accused.

(N.J.JAMADAR, J.)