

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 1532 OF 2023

Magan Baliram Chavan
Age: 25 years, Occu: Labour,
R/o: Ward No.10, Gram Devlali,
Post Chanera, Tq. New Harsud,
Dist. Khandwa, Madhya Pradesh
at Present Nashirabad,
Tq. and Dist. Jalgaon

... Applicant

Versus

1. The State of Maharashtra
Through its Nashirabad Police
Station, Nashirabad, Tq. and Dist. Jalgaon

2. XYZ

... Respondents

...

Mr. P. R. Harshal, Advocate for the Applicant
Mr. S. B. Narwade, APP for the Respondent/State
Mr. R. K. Khandelwal, Advocate for the Informant

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 03.10.2023

PER COURT :

1. Heard the learned Advocate for the applicant, learned APP for the respondent/State and learned Advocate for the Informant.
2. By this application, the applicant seeks regular bail in connection with Crime No.48/2022 registered with Nashirabad Police Station Tq. and Dist. Jalgaon for the offences punishable under Sections 363, 376 of the Indian Penal Code [for short 'IPC'] and Sections 4, 6 and 12 of the Protection of Children from Sexual Offences Act, 2012 [for short 'POCSO Act'].

3. The investigation was set in motion on the basis of information given by the father of victim. He alleges that, on 05/05/2022, his minor daughter, aged about 16 years 5 months, gone missing from the home. Though a search was taken at various places, she could not be traced out. Therefore, he suspected that, the unknown culprit has kidnapped her. The investigation is progressed in pursuance of report. During the course of investigation, the victim was traced and her statement is recorded. It reveals that, the victim had a love affair with the applicant and she left the home on her volition. She resided with the applicant in the State of Madhya Pradesh and also married with him. It appears that, the applicant is arrested on 29/11/2022 and since then, he is behind the bars.
4. Learned Advocate appearing for the applicant would submit that although the victim is a minor girl, she left the home on her volition because of love affair with the applicant so also married with him. The further acts of the victim are conscientious in nature. The applicant is behind the bars for more than eleven months. The investigation is complete and charge-sheet is also filed. The further detention of the applicant would not be necessary. He urges to grant bail to the applicant.
5. Learned APP so also learned Advocate appearing for the complainant vehemently opposes the prayer for grant of bail. They would submit that undisputedly, the victim is a minor. Her consent is immaterial. The applicant knew that the victim is a minor, but taking disadvantage of the absence of parents, he kidnapped her. Therefore, according to them, the offences under IPC as well as POCSO would attract in the present case. They would submit that release of the applicant may hamper the smooth prosecution. The possibility of tampering the evidence cannot be ruled out. Therefore, they urge to reject the

application.

6. Having considered the submissions advanced, it is apparent that, initially FIR was registered on the information given by the father of victim that the minor girl has been kidnapped by the unknown person. During the course of investigation, the victim along with the applicant was traced in the State of Madhya Pradesh, where they resided together. The statement of the victim is recorded under Section 161 of the Code of Criminal Procedure [for short 'Cr.PC'], wherein, she states that, she passed 10th standard from the New English School. She had love affair with the applicant and both of them left the home towards Madhya Pradesh with intention to marry. She further states that, at a Lakshmi Temple, they married and cohabited together. The statement of the victim is also recorded under Sections 164 of Cr.PC, wherein, she gives the similar narration.
7. From the aforesaid statement, it is apparent that, the victim is educated up to 10th standard and has sufficient understanding. She left the home on her own volition because of love affair with the applicant and she married with him in a temple. The victim and applicant resided together. From the aforesaid material, it can be gathered that, there was no criminal intent on the part of the applicant. Although age of the applicant is less than seventeen years, her conduct shows that, she has sufficient understanding of worldly affairs and she was in love with the applicant.
8. In the aforesaid circumstances, when the investigation is complete and charge-sheet is filed, further detention of the applicant is not warranted. Hence, the case is made out for grant of bail.

ORDER

- (i) Bail Application is allowed.

- (ii)** The applicant, namely, Magan Baliram Chavan be released on bail in connection with Crime No.48/2022 registered with Nashirabad Police Station Tq. and Dist. Jalgaon for the offences punishable under Sections 363, 376 of the IPC and Sections 4, 6 and 12 of the POCSO Act on furnishing P.B. and S.B. of Rs.50,000/- (Rs. Fifty Thousand only) on the following conditions:
- (a)** The applicant shall not tamper with the prosecution evidence/witnesses in any manner.
 - (b)** He shall attend each and every effective dates before the Trial Court.
 - (c)** He shall furnish the details of his residential address and contact numbers to the concerned police station and update the same time to time.
 - (d)** He shall not enter in village Nashirabad, Taluka and District Jalgaon till conclusion of the trial.
- (iii)** Bail Application is disposed of accordingly.

[S. G. CHAPALGAONKAR]
JUDGE

Sameer