

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

CRIMINAL BAIL APPLICATION NO. 2146 OF 2022

Aniket Kailash Madane

Age : 21 Years, Occupation : Labour,

Residing at : Village Gondavale,

Taluka : Man, District : Satara.

...Applicant

VS.

1. The State of Maharashtra
Through Dahivadi Police Station,
District : Satara, C.R. No.344/2021.

2. X.Y.Z.
Age : 45 Years, Occupation : Labour,
R/o. : Gondavle Khurd, Taluka : Man,
District : Satara.

...Respondent

Mr.Dilip Shinde a/w Mr.S.M.Bhavar a/w Mr.M.S.Mane, Advocate for the Applicant.

Mr.N.B.Patil – APP for the Respondent No.1-State.

Mr.Yashodeep Deshmukh-Appointed Advocate for Respondent No.2.

CORAM : S. M. MODAK, J.

DATE : 3rd MARCH, 2023

P. C. :-

1. Heard learned Advocate Shri.Dilip Shinde for the Applicant,
learned APP Shri.N.B.Patil as well as learned Advocate
Shri.Yashodeep Deshmukh for the Respondent No.2-Victim.

2. The FIR is the outcome of an act of elopement by the Applicant along with the victim. The victim went missing from the house on 25th November, 2021. She left the house under the pretext of attending the school, however, she has not returned home. Her father in order to meet the requirements of the family is working at District : Solapur, returned home urgently. He was told about the incident by his wife. He has no alternative but to take the assistance of the Police and he lodged the complaint on 27th November, 2021 with the Dahivadi Police Station. It was registered as an offence under Section 363 of the Indian Penal Code, 1860 [“IPC”] against an unknown person.

3. During the investigation, it was revealed that both the victim and Applicant without understanding the nature and consequences of their act, have gone to Shirur, District : Pune. Both were found in the room belonging to one Balasaheb Ramchandra Gaikwad, Police went there. They were found. Victim was taken to Shirur Police Station and then to Dahiwadi Police Station. Her statement was recorded and she disclosed about the act of sexual intercourse under compulsion which happened on 26th November, 2021. Necessary sections were added. Police completed investigation and filed

charge-sheet for the offences punishable under Sections 366, 354(d), 376, 376(3) of the IPC and under Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 [“POCSO Act”]. Her statement is also recorded under Section 164 of the Code of Criminal Procedure, 1973 [“Cr.P.C.”].

4. It was contended that both of them are desirous of marrying with each other and even though, the victim is minor, she eloped with the Applicant willingly. This Court under similar circumstances, have granted bail. Some of the judgments are as follows :-

- (i) Sunil Mahadev Patil V/s. The State of Maharashtra¹
- (ii) Raghunath Bhanudas Kamble V/s. The State of Maharashtra and Anr.²
- (iii) Ritesh Ravindra Landge V/s. The State of Maharashtra and Anr.³
- (iv) Anirudha Radheshyam Yadav V/s. The State of Maharashtra⁴

5. Learned APP Shri.Patil and learned Advocate Shri.Deshmukh opposed the bail for the reason that such alleged consent on the part of the victim is no valid consent as she is not competent. There is submission made to give directions to the trial Court to expedite the hearing of the case.

1 2016 ALL MR (Cri) 1712

2 Bail Application No.155 of 2021 : dated 20th January, 2022 : Bombay High Court

3 Bail Application No.3719 of 2021 : dated 15th July, 2022 : Bombay High Court

4 Cri.Bail Application No.2632 of 2019 : dated 9th January, 2020 : Bombay High Court

6. It is true that this Court has granted bail in some of the cases as mentioned above. The law is very clear. I have perused her statement recorded under Section 164 of Cr.P.C. Even though, she has stated that she went along with the Applicant and finally went to Shirur, Pune, about the act of sexual intercourse, she has stated that it was against her wish. It is also true that in her police statement, she has not stated that she was forcibly taken. She had gone under the pretext of performing marriage on the basis of assurance given by the Applicant.

7. It is true that one of the ways of dealing with the matter is to expedite the hearing of the case. Even it is also true that there are number of under trials even before Satara Court. Considering the fact that this was not a case of forcible elopement from the beginning and considering the fact that Applicant is also young of the age of 21 years, I think he can be admitted to bail. It is true that on the last date, the statement recorded under Section 164 of Cr.P.C., was brought before the Court and Court has perused it. It is reflected in the order dated 14th February, 2023. Its contents are not intentionally disclosed in the order.

8. In view of that, let the Applicant be released on bail. Hence,

order :-

O R D E R

- (i) Application is allowed.
- (ii) Applicant Aniket Kailash Madane be released on bail in connection with C.R. No.344 of 2021 registered with Dahiwadi Police Station – Satara on furnishing personal bond and surety bond of Rs.25,000/-.
- (iii) Applicant to give attendance to Dahiwadi Police Station on every Sunday from 10.00 to 12.00 noon for one year.
- (iv) Applicant not to threaten the Prosecution witnesses or to allure them in any manner.
- (v) In case of breach of any of the conditions, bail of the Applicant is liable to be cancelled after notice.

9. It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with the law, uninfluenced by the observations made in this order.

10. Application is disposed of in the aforesaid terms.

11. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]