

ORDER BELOW EXH. 1

1] Perused application and say. Heard advocate for applicant and A.P.P. for state.

2] This application is filed under section 439 of Cr.P.C. by applicant in respect of his arrest in C.R. no. 331/18 registered at Vimantal Police Station for the offence punishable under section 376 of the Indian Penal Code and under sections 3, 4, 5(J)(2), 6, 7, 8 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that mother of victim lodged report of missing. During investigation it revealed that, applicant committed sexual intercourse with victim under pretext of marriage, act was repeated as a result of which she became pregnant and delivered girl child.

3] According to applicant he is falsely implicated in this matter. There is delay in lodging report. It is case of love affair between applicant and victim. Her family members opposed relationship. Applicant is ready to marry with victim and take care of victim and new born baby. Victim is about 17 years old and attained age of maturity. Applicant is doing service and he is resident of Hingni-Khurd, Dist.-Beed. He has no criminal antecedents. He is ready to abide the conditions. Hence, he prayed to release him on bail.

4] APP and I.O. objected this application on the ground that investigation is in progress. Statement of victim under section 164 of Cr.P.C. is not recorded. Applicant will pressurize victim and witnesses. There is possibility of tampering prosecution evidence and witnesses.

So, they prayed to reject the application.

5] Allegations against the applicant are serious. Applicant is sufficiently interrogated. From statement of first informant role attributed to applicant can be gathered. Available police papers shows that, applicant committed sexual intercourse with victim under pretext of marriage from time to time and victim delivered girl child on 15/10/2018. After delivery of child report is filed on 17/10/2018. It appears that since beginning, after first incident victim did not complain. Moreover, till delivery of child victim did not lodge report or narrate incident to any one.

6] Victim is about 17 years old. Applicant is 24 years old. Victim has attained age of sufficient maturity and knows the consequences of act. In this context it is necessary to rely on authority cited in ***Sunil Mahadev Patil Vs. State of Maharashtra reported in 2016 All MR (Cri.) 1712***, in which it is observed that if statement of prosecutrix and witnesses shows that they were in love relationship with each other they eloped and went to temple and performed marriage, they started residing together in the house of relative then there are mitigating circumstances. Moreover, it is observed that factor i.e. age of prosecutrix, whether act is violent, whether there are antecedents or not, whether offender is capable of repeating the act or not, whether there is likelihood of threats or intimidation if at all the boy is released, whether chance of tampering with material witnesses and age of the applicant and his employment and plan, stabilize and secure his future are to be taken into consideration while deciding bail application, when boy and minor girl are in love with each other.

7] Ratio laid down in above cited ruling is noted. As discussed above since beginning victim did not complain and kept silence till delivery of child. These are mitigating circumstances. Applicant is doing job and pursuing his career. Investigation is practically over. Personal custody of applicant is not required. Applicant is resident of Tq. Hingni-Khurd, Dist.-Beed. Applicant has no criminal antecedents. No purpose would serve by keeping the applicant behind bar for unknown period. Due to all above reasons application deserves to be allowed with following order -

ORDER

- 1] The application is allowed.
- 2] The applicant Rahul Shahadev Gaikwad be released on executing P.R. bond of Rs.30,000/- with one or two solvent sureties in the like amount. One local surety be furnished.
- 3] The applicant shall not tamper the prosecution witnesses in any manner. Applicant shall not pressurize victim and witnesses.
- 4] The applicant shall attend Vimantal Police Station on every Monday between 11.00 a.m. to 2.00 p.m. till the charge-sheet is filed.
- 5] The applicant shall co-operate investigating machinery as and when required.
- 6] Prior to furnishing surety, the applicant shall submit his address proof, mobile number and inform about the change in address and mobile number.

Pune.
Date – 12.12.2018.

(R.V.Adone)
Addl.Sessions Judge, Pune.

“ I affirm that the contents of the P.D.F. File Judgment are same word for word as per original judgment.

Name of Steno	- A.V.Tungar,
Court Name	- Smt. R.V.Adone, Addl.Sessions Judge,Pune.
Date of Order	- 12.12.2018
Order signed by P.O.	- 12.12.2018
Order uploaded on	- 12.12.2018