

ORDER BELOW EXH.1

1] Perused application and say. Heard Advocate for applicants and APP for the State. Perused affidavit and reply filed by original complainant.

2] This is first bail application filed under section 438 of Cr.P.C. by applicant in respect of apprehension of his arrest in C.R. no. 584/18 registered at Kondhwa Police Station for the offence punishable under section 363, 366, 376 of the Indian Penal Code and under section 12 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that father of victim lodged report of her missing. During investigation and after recording statement of victim, it revealed that applicant kidnapped victim, induced her and under pretext of marriage committed forcible sexual intercourse with her.

3] According to applicant he is falsely implicated in this matter. There is love affair in between applicant and victim. Victim is more than 17 years old and has attained age of sufficient maturity. She herself left the house. Applicant is 18 years old and at relevant period he was below 18 years. He is student and has no criminal antecedents. He is resident of Lohiyanagar, Pune. Due to levelling of offence punishable under section 376 of Indian Penal Code and under section 12 of POCSO Act, there is apprehension in the mind of applicant about his arrest. So, he prayed for grant of protection under section 438 of Code of Criminal Procedure.

4] APP and I.O. objected the application on the grounds that investigation is in progress. Documents relating to age of applicant are yet not obtained. His medical examination is to be conducted. Applicant will pressurize victim and witnesses, there is possibility of tampering prosecution and absconding of the applicant. They prayed

to impose strict conditions and to reject the application.

5] Advocate of applicant filed on record certified copy of bail order to show that co-applicant i.e. father of present applicant is released on bail, School Leaving Certificate of applicant showing his birth date 27/09/2000, reply filed by original complainant giving no objection to bail application of co-accused, identity card of applicant to show that he is student.

6] Advocate of applicant submitted that at the relevant period applicant was child in conflict with law. Custodial interrogation with him is not required and his anticipatory bail application is maintainable. In that regard, he relied on authorities cited in : i] Cri.Appln. No.2351/2009, dated 2nd July 2009 (Sunil @ Pappu Balasaheb Watekar Vs. State of Maharashtra), in which it is also held that applicant being child in conflict with law, police cannot carry out custodial interrogation with him and anticipatory bail was granted. ii]Unreported Bail Application No.3330/2018, (Mr.X S/o Baby V.M.), in which it is observed that anticipatory bail application at the instance of child in conflict with law is maintainable.

7] Ratios laid down in above cited rulings are noted. On the basis of record and as per prosecution case, on 26/09/2018 victim was kidnapped, it appears that on that day applicant was below 18 years old. Victim is also more than 17 years old. Original complainant i.e. father of victim filed reply and affidavit stating that victim has completed 18 years of her age and she is going to marry with applicant. Therefore, he gave no objection for grant of anticipatory bail application to applicant. Co-accused is released on bail by considering the facts that present applicant and victim were in love relationship, they both left the house and went to Karnataka where applicant

committed sexual intercourse with victim.

8] Present applicant is student and his career will spoil, if he remained in jail. His application for anticipatory bail is tenable in view of legal position. He is ready to co-operate investigating machinery and resident of Lohiyanagar, Pune. He has no criminal antecedents. In view of apprehension in his mind and considering mitigating circumstances, it is proper to consider his application. Considering age and future career of applicant and in view of reasonable apprehension in his mind, it is proper to grant protection to applicant under section of 438 of the Code of Criminal Procedure. Hence, following order is passed.

ORDER

1] The application is allowed.

2] In the event of arrest in Crime no.584/18 at Kondhwa Police Station, applicant Fardin Firoz Pathan be released on executing P.R. bond of Rs.30,000/-with one or two solvent sureties in the like amount.

3] The applicant shall not tamper the prosecution evidence and shall not pressurize victim and witnesses in any manner.

4] The applicant shall attend Kondhwa Police Station on every Monday between 11.00 a.m. to 2.00 p.m. till filing of the charge-sheet.

5] The applicant shall co-operate investigating machinery as and when required.

6] The applicant shall submit their address proof, mobile number and inform about the change in address and mobile number.

8] Inform Kondhwa Police Station accordingly.

Pune.
Date – 27/11/2018.

(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	- P.I.Shaikh,
Court Name	- Smt. R.V.Adone, Addl.Sessions Judge,Pune.
Date of Order	- 27.11.2018
Order signed by P.O.	- 27.11.2018
Order uploaded on	- 15.12.2018