

ORDER BELOW EXH.1

1] Perused application and say. Heard Advocate for applicant and APP for the State.

2] This is first bail application filed under section 439 of Cr.P.C. by applicant in respect of his arrest in C.R. no. 215/17 registered at Kondhawa Police Station for the offence punishable under section 363,366A,376 of the Indian Penal Code and under section 4,8,12 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that father of victim lodged report of her missing. During investigation it revealed that victim and applicant were acquainted with each other. There was love affair between them. They both were found at Ambedkar Nagar, Kondhawa Budruk and victim delivered child. As per prosecution case applicant committed forcible sexual intercourse with victim by kidnapping and inducing her.

3] According to applicant he is falsely implicated in this matter. It is a case of love affair since 5 years. Victim left house at her own accord. They performed marriage and they have daughter of four months out of wedlock. Parents of victim opposed relationship. Applicant is earning member of family and he is doing service. He is permanently residing at Kondhawa Budruk Pune. 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 yet not recorded. Applicant will pressurize victim and witnesses. There is possibility of tampering prosecution evidence. So, they prayed to reject the application.

5] Allegations against the applicant are serious. Applicant is sufficiently interrogated. From available remand papers and affidavit filed by victim, it revealed that due to love affair victim and applicant went away and resided at various places. They garland each other and performed marriage

and out of wedlock they have four months daughter. According to victim applicant never committed forcible sexual intercourse with her. Victim is at present 20 years old, applicant is 24 years old. At the time of alleged incident victim has attained age of sufficient maturity and knows the consequences of act.

6] 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. From affidavit of victim prima-facie it revealed that due to love affair she went away with applicant. They performed marriage and resided together. They have four months daughter. Victim has no grievance against applicant and victim never complained since beginning and after delivery of child. These are mitigating circumstances. Moreover, investigation is practically over and personal custody of applicant is not required. Applicant is doing service and resident of Kondhawa Budruk, Pune. He 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 Mahesh Prakash Jagtap be released on executing P.R. bond of Rs.25,000/- with one or two solvent sureties in the like amount.
- 3] The applicant shall not tamper the prosecution 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 the charge-sheet is filed.
- 5] The applicant shall not harass, threat and pressurize the victim.
- 6] The applicant shall co-operate investigating machinery as and when required.
- 7] 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 – 04.01.2019.

(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	- S.V.Thakar,
Court Name	- Smt. R.V.Adone, Addl.Sessions Judge,Pune.
Date of Order	- 04.01.2019
Order signed by P.O.	- 04.01.2019
Order uploaded on	- 05.01.2019

