

ORDER BELOW EXH.1

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

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. 120/18 registered at Chikhali Police Station for the offence punishable under section 363,366A,376 of the Indian Penal Code and under section 3,4 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that father of victim aged about 17 years lodged report of her missing. During investigation and after recording statement of victim, it revealed that victim and applicant were acquainted with each other. There was love affair between them. They were meeting each other and talking with each other. Applicant promised to marry with her and on 21.12.2018 they met in front of Huma Bakery, they went to Shivajinagar Bus Stop, then to Pandharpur, then to Shirdi. They resided in a rented room where applicant committed forcible sexual intercourse with victim under pretext of marriage.

3] According to applicant he is falsely implicated in this matter. It is a case of love affair. Victim herself left the house. Victim is more than 16 years old and attended age of sufficient maturity . Applicant is ready to marry with victim. Applicant is 23 years old and doing service. He is permanently residing at Talwade, 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. Applicant committed sexual intercourse with victim under pretext of marriage. Applicant is originally resident of District-Beed. There is possibility of his absconding. 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 statement of victim role attributed to applicant can be gathered. Advocate of applicant filed on record letters sent by victim to applicant and whatsapp messages exchanged between them. It revealed that due to love affair victim and applicant went away and resided at different places i.e. at Pandharpur, Shirdi and Patoda. Victim is 16 years old and applicant is 23 years old. Victim has attained age of sufficient maturity and knows the consequences of act.

6] In this context Advocate of applicant relied on authorities cited in -

i] ***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.

ii] ***Satyam Ramchandra Fulore Vs. State of Maharashtra reported in 2015 All M.R. (Cri.) 2785***, in which it is observed that if victim was in love with applicant and no history of sexual or physical assault revealed from the medical examination, victim being 16 years old had attained age of understanding, prima-facie case is made out for grant of bail.

7] Ratios laid down in above cited rulings are noted. In medical

report victim gave history of love affair and sexual intercourse with consent. There are no injuries on her body. Victim never complained since beginning. It prima-facie revealed that she herself left the house and went with applicant due to love affair at different places. These are mitigating circumstances. Moreover, investigation is practically over. Personal custody of applicant is not required. He has no criminal antecedents. His family members are depending on him. He is permanently, residing at Talwade, Peth, Pune. 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 Ganesh Sakharam Kadam 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 witnesses in any manner.
- 4] The applicant shall attend Chikhali 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 – 28.01.2019.

(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	-
Court Name	- Smt. R.V.Adone, Addl.Sessions Judge,Pune.
Date of Order	- 28.01.2019.
Order signed by P.O.	- 28.01.2019.
Order uploaded on	- 29.01.2019.