

ORDER BELOW EXH.1

1] This is an application for bail filed by the applicant u/s. 439 of Code of Criminal Procedure in connection with CR No. 57/2021 registered with Kondhwa police station for the offences under Sections 363, 376(2)(n) of Indian Penal Code and under Sections 4,8,12 of Protection of Children from Sexual Offences Act. [Hereinafter Indian Penal Code referred to as “IPC” and Protection of Children from Sexual Offences Act referred to as “POCSO Act” for the sake of brevity.]

2] The prosecution has filed say and opposed this bail application. The victim appeared and filed say and she has given no objection for granting bail to the applicant. She has stated that on 20.01.2021 she married to the applicant and she is 8 months pregnant and she is in need of the applicant at the time of her delivery. Hence, she has prayed for allowing the application.

3] Heard Ld. Advocate for the applicant and Ld. APP for the State. Perused application, say filed by the prosecution and police papers.

4] It is argued by Ld. Advocate for the applicant that the victim is 17 years 3 months old. She herself left the home and eloped with the applicant. Mother of the applicant has filed affidavit. Parents of the victim have not taken her back. From affidavit it discloses that her son i.e. applicant and the victim married and the victim is

pregnant and she has accepted the victim as her daughter-in-law.

5] Ld. APP has objected this application and urged that minor's consent is not consent. Charge-sheet is not filed. Investigation is incomplete. Hence, prayed for rejection of the application.

6] It indicates from FIR that father of the victim has lodged report on 21.01.2021 under Section 363 of the IPC. The victim is 17 years and 2 months old. Perused statement of the victim wherein she has specifically stated that applicant and the victim were knowing each other since last 3 years and developed love relationship between them. In the year 2020 both decided to marry and her mother was against their marriage. Therefore, both decided to elope.

7] It appears that on 21.01.2020 the victim herself gave phone call to the applicant and told him that her family members were beating her and trying to fix her marriage with other boy and requested him to take her with him. Accordingly, it appears that at her own wish, she eloped along with the applicant. Both went at Katraj and thereafter, went at the back side of Warje Malwadi Police Chowky and resided there. They married on 21.12.2021 at Hanuman Mandir, Warje. Thereafter, they stayed together at various places and during the said period, the applicant established physical relations with the victim and remained pregnant.

8] Thus, prima facie from police papers and statement of the

victim and history narrated by the victim to the doctor discloses that it is the case of love affair and the applicant herself surrendered to physical desires of the applicant out of her love and affection towards the applicant.

9] Ld. Advocate for the applicant has placed his reliance in **Sunil Mahadev Patil V/s. The State of Maharashtra, 2016 ALL MR (Cri) 1712**, wherein it is held that when a boy and a minor girl are in love with each other and choose to live together without consent of their parents, then the following factors are to be considered:

- (i) What is the age of the prosecutrix, who is minor,
- (ii) Whether the act is violent or not,
- (iii) Whether there are antecedents or not,
- (iv) Whether the offender is capable of repeating the Act or not,
- (v) Whether there is likelihood of threats or intimidation, if at all the boy is released,
- (vi) Whether any chance of tampering with the material witnesses when their statements are recorded,
- (vii) It is also to be taken into account in such cases that a boy in his early 20's deserves to get employment and to plan, stabilize and secure his future.

10] Further, Ld. Advocate for the applicant has placed his reliance in **Anirudha Yadav Vs. State of Maharashtra (2020 CLU 500)**, wherein it is held that,

“The facts not suggesting that the accused had ever induced and/or forced the victim to leave her parents' house. The provisions of POCSO are, though, stringent in nature, would not deter the Court to grant or refuse bail in order to secure the ends of justice. The conduct of the victim is indicative or the fact that she had left the home of her parents by her own will and that she had surrendered to the physical desires of

the accused out of her love and affection for him. No doubt, that the victim, is a minor, however, the facts of the present case indicate that she had sufficient knowledge and capacity to know full import of what she was doing and had only thereafter voluntarily joined the accused.

11] Thus, prima facie it discloses that there is love relationship between the victim and the applicant. If a girl is a minor between age of group of 15 to 18 years and there was consensual sexual intercourse, then it is a mitigating circumstance. There are no allegations of any violent act against the applicant. The applicant is a boy in his early 20's deserves to get employment and to plan, stabilize and secure his future. The victim herself left the house of her parents and joined to the applicant. Considering her age of understanding, it is a fit case to grant bail to the applicant. Therefore, application is to be allowed by imposing stringent conditions upon the applicant. With this, I proceed to pass the following order:

ORDER

- 1] The application is allowed.
- 2] The applicant **Krishna Suresh Londhe** shall be released on bail upon furnishing P.R. bond in the sum of Rs.15,000/- with one surety in the like amount.
- 3] The applicant shall attend concerned police station on every Monday between 10.00 am to 11.00 am till filing of the charge-sheet.
- 4] The applicant shall not tamper with the prosecution evidence in any manner. He shall not pressurize the victim, informant and family members and witnesses and shall not indulge in any offence.

- 5] The applicant shall make himself available and shall regularly attend each and every Court date.
- 6] The applicant shall submit his address proof and phone details as well as phone details of two close relatives to Investigating Officer.
- 7] The applicant shall not leave The State of Maharashtra without prior permission of this Court.
- 8] Violation of any of the conditions imposed, shall amount the cancellation of bail forthwith.
- 9] Bail application stands disposed of accordingly.

Pune.
Date – 18/09/2021.

(S.P. Ponkshe)
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	- Sau.S.V.Thakar (Steno G-1)
Court Name	- Smt. S. P. Ponkshe, Addl.Sessions Judge,Pune.
Date of Order	- 18.09.2021
Order dictated on	- 18.09.2021
Order transcribed on	- 20.09.2021
Order signed by P.O.	- 21.09.2021
Uploaded on	- 21.09.2021