

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.423/2018 registered at Warje Malwadi Police Station for the offence punishable under section 363, 376(2)(j)(n) of the Indian Penal Code and under sections 4, 10, 12 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that mother of victim aged about 17 years lodged report of her missing. During investigation it revealed that she was acquainted with applicant, there was love affair between them. Her parents decided to perform her marriage with some other else. So she made phone call to applicant on 06-11-2018 asked to run away. Applicant convinced her but she did not listen. They went to Hubli and resided in rented room where they kept sexual relationship.

3- According to applicant he is falsely implicated in this matter. It is a case of love affair. Victim is more than 17 years old. She is major. She left house on own accord. Applicant never committed forcible sexual intercourse with her. Investigation is practically is over. He is doing service and resident of Hadapsar, 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. filed say and submitted that applicant committed forcible sexual intercourse with victim. Investigation is in progress. 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. Victim was acquainted with applicant, there was love affair between them. Her parents decided to perform her marriage with some other else. So she made phone call to applicant on 06-11-2018 asked to run away. Applicant convinced her but she did not listen. They went to Hubli and resided in rented room where they kept sexual relationship. It appears that victim left house on own accord, since beginning victim did not complain though she resided with applicant for considerable period. She refused for medical examination. These are mitigating circumstances. Victim is more than 17 years and 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. Victim is matured enough and prima facie left the house at her own accord. There is no medical examination of victim as she did not give consent. Investigation is

practically over and personal custody of applicant is not required. Applicant is doing service and pursuing his career. He is resident of Mohammadwadi, Hadapsar, 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 Shahrukh Shabbir Shaikh 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 Warje Malwadi 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 – 08-04.2019.

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

CNR No.
MHPU010047312019

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Cri.Bail Application No. 1542/2019

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

Name of Steno	- U. S. More Stenographer Grade II
Court Name	- Smt. R.V.Adone, Addl.Sessions Judge,Pune.
Date of Order	- 08-04.2019.
Order signed by P.O.	- 08-04.2019.
Order uploaded on	- 09-04.2019.