

ORDER BELOW EXH.1

1] Perused application and say. Heard Advocate for applicant and APP for the State. Notice issued to first informant and perused reply filed by her.

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. 108/2021 registered at Vimantal Police Station for the offence punishable under sections 376, 376(n) of the Indian Penal Code and under sections 3, 4 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that victim aged about 16 years lodged report stating that she and her mother are doing labour work at construction site. Applicant is also one of the labourer doing mason work. Therefore, victim was acquainted with applicant. Applicant was meeting victim at work site and used to talk sweetly with victim. In December-2020 applicant told victim that she looks beautiful and he loves her, after 3 days at construction site in one room, applicant under pretext of marriage committed forcible sexual intercourse with victim. Act was repeated from time to time and in January-2021 victim missed her menstrual cycle. Her mother inquired with her and then with the help of pregnancy kit, checking was made and it revealed that victim was pregnant.

3] According to applicant he is falsely implicated in this matter. There is love affair between applicant and victim. Victim knows the consequences of the act. Moreover investigation is practically over. Applicant is 30 years old and doing labour work. His family members are dependent on him. He is permanently residing at Yerwada, 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. Victim is in frightened condition. Applicant will pressurize victim and witnesses. On 5.5.2021 victim is to be aborted and therefore her medical examination is yet not completed. So there is possibility of tampering prosecution evidence. So, they prayed to reject the application.

5] Allegations against the applicant are serious. From statement of first informant i.e. victim role attributed to applicant can be gathered. It revealed that due to nature of work at same place applicant and victim were acquainted with each other. Applicant and victim were talking with each other. Firstly, in December-2020 by talking sweetly with victim and under pretext of marriage applicant committed forcible sexual intercourse with victim, act was repeated from time to time and victim became pregnant. Advocate of applicant submitted that it is case of love affair. They were knowing each other and similar history is narrated by victim to Medical Officer.

6] In support of his contentions, Advocate of applicant relied on authorities cited in **Bail Application No. 2632/2019 between Anirudha Radheshyam Yadav V/s. The State of Maharashtra, 2020 CLU 500** in which it is observed that so far as offences punishable under Section 4, 6, 8 of Protection of Children from Sexual Offences Act is concerned, it may be stated that the provisions of POCSO Act 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 of 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 applicant out of her love and affection for him. She has sufficient knowledge and capacity to know full import of what she was

doing and had only thereafter voluntarily joined the complainant. Due to peculiar facts of case bail was granted to applicant. In above cited ruling, victim was 14 years 11 month old and applicant was 25 years old. From statement of victim it appears that she left the house secretly with her belongings and travelled with applicant.

(ii) **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.

(iii) **Pravin Ashok Rakh V/s. State of Maharashtra, 2007(1)(B Cr. C. 228**, in which it is observed that prosecutrix aged 14 years went and stayed with applicant for several days at various places. From F.I.R. it is clear that prosecutrix was consenting party. Hence, bail was granted.

(iv) **Mahendra Gokul Rajput V/s. State of Maharashtra, 2006 (o) BCI 451**, in which Hon'ble High Court Bench at Aurangabad observed that prosecutrix aged about 16 years had friendly relations with accused and used to write letters to him showing her affection towards him. She filed the complaint at the instance of her maternal uncle. Bail was granted.

7] Ratios laid down in above cited rulings are noted. In medical papers, victim stated about acquaintance with applicant, however it is also

narrated that accused is married person and initially victim was unaware about the same. Doctor opined that from history and clinical examination there is evidence of vaginal penetration with intrauterine pregnancy of approximate gestational age of 15 weeks of fresh physical injuries. Police reply shows that victim is to be aborted. As accused is married person, there is gravity of offence. Moreover, considering age difference between victim and applicant, applicant will pressurize victim and witnesses. Investigation is in progress. There is nothing on record that statement of victim u/s. 164 of Cr.P.C. is recorded. So, there is every possibility of giving threat and pressure to victim and witnesses. There is possibility of absconding of applicant due to nature of his work. So, at this initial stage, it is not proper to release applicant on bail. Hence, application deserves to be rejected with following order:

ORDER

Application is rejected.

Pune.
Date – 5.5.2021.

(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	- Sau. Arya Nikam (Stenographer G-1)
Court Name	- Smt. R.V.Adone, Addl.Sessions Judge,Pune.
Date of Order	- 5.5.2021.
Order signed by P.O.	- 5.5.2021
Order uploaded on	- 5.5.2021