

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. 314/2021 registered at Hadapsar Police Station for the offence punishable under sections 363, 376(2)(n) of the Indian Penal Code and under sections 4,8,12 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that mother of victim aged about 17 years report of her kidnapping and against applicant. During investigation and after recording statement of victim it revealed that she was acquainted with applicant and there was friendship and love affair between them since one year. They were meeting and talking with each other. Prior to 2 to 3 months applicant took victim for roaming on his motorcycle at Uruli. He took her at his house and under pretext of marriage he committed sexual intercourse with victim. Act was repeated under pretext of marriage, as a result of which victim became pregnant.

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 therefore, she knows the consequences of the act. There was no force from the applicant. Victim left the house at her own accord. Applicant is 28 years old and doing service. His family members are depending on him. He is permanently residing at Saswad, Tal-Purandar, 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 u/s. 164 of Cr.P.C. 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. From statement of victim role attributed to applicant can be gathered. It revealed that there was friendship and love affair between victim and applicant since one year. They were meeting and talking with each other. Prior to 2 to 3 months applicant took victim at his house at Uruli and committed sexual intercourse with her under pretext of marriage. Act was repeated and victim became pregnant. Victim is 17 years old and applicant is 28 years old. Victim has attained age of sufficient maturity and knows the consequences of act.

6] In this context it is necessary to rely 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.

7] Ratios laid down in above cited rulings are noted. Medical report of victim shows history of love relationship since one year and they had multiple consensual vaginal penetrative sexual intercourse. There are no injuries on any part of body of victim. Pregnancy of 8 weeks is detected. Victim never complained since beginning and though act was repeated. These are mitigating circumstances. Moreover, considering nature of offence and allegations, investigation is practically over. Personal custody of applicant is not required. He has no criminal antecedents. He is only 28 years old and doing service and his family members are depending on him. He is permanently residing at Saswad, Tal-Purandar, 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 Sagar Sukhdev Gaikwad 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 evidence in any manner.
- 4] The applicant shall attend Hadapsar 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 – 24.5.2021.

(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	- 24.5.2021.
Order signed by P.O.	- 24.5.2021.
Order uploaded on	- 25.5.2021.