

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. 156/2021 registered at Wakad Police Station for the offence punishable under sections 363, 376 of the Indian Penal Code and under sections 3,4 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 kidnapping. During investigation and after recording statement of victim it revealed that she was acquainted with applicant and there was love affair between them. Her family members learnt about the same and quarrel took place. Later on, she met applicant and asked him to take her at his village. On 18.2.2021 she left the house with bag and met applicant near Jeevanjyoti Hospital. From there, they both went by travells to Buldhana. They alighted at Mehekar village and went at the house of sister of applicant, resided there for 2 days, married with each other and then they resided in room where under pretext of marriage applicant committed forcible sexual intercourse with her.

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 25 years old and doing service. His family members are dependent on him. He is permanently residing at Rahatani, 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 will pressurize victim and witnesses. There is possibility of tampering prosecution evidence. They are residing in same area. He is originally resident of Buldhna, there is possibility of his absconding. 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 love affair between victim and applicant and they were talking and meeting each other. Her family members learnt about the same and quarrel took place. On 18.2.2021 prima facie she left the house at her own accord, met applicant, they both went by travels, reached at Mehekar, resided together in the house of sister of applicant and then in room where by doing marriage applicant forcibly committed sexual intercourse with her under pretext of marriage. Victim is more than 17 years old and applicant is 25 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 **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) **Dnyaneshwar Trimbak Navghare V/s. The State of Maharashtra, Cri. Bail Application No. 234/2020, decided on 13.7.2020,** in which 14 years old victim left the house and eloped with accused at different places and accused kept sexual relation with her. It is observed that victim possess mental capacity to understand the nature and consequences of act to which she had consented. Therefore, bail was granted to accused.

7] Ratios laid down in above cited rulings are noted. Victim refused for medical examination by stating that she left the house and she has no grievance against anyone. She is responsible for not conducting medical examination. First informant and victim filed their affidavits and gave no objection for grant of bail to applicant as victim and applicant are ready to marry after attaining age of majority. These are mitigating circumstances. Moreover, considering nature of offence and allegations, investigation is practically over. Applicant is sufficiently interrogated, his personal custody is not required. He has no criminal antecedents. He is only 25 years old and doing service and his family members are depending on him. He is permanently residing at Rahatani, 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 Datta Sardar @ Bhimrao Ramrav Avsarmol be released on executing P.R. bond of Rs.30,000/- with one or two solvent sureties in the like amount. One local surety be furnished.

- 3] The applicant shall not tamper the prosecution evidence in any manner.
- 4] The applicant shall attend Wakad 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 – 20.3.2021.

(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	- 20.3.2021.
Order signed by P.O.	- 20.3.2021.
Order uploaded on	- 22.3.2021.