

ORDER BELOW EXH.1

(Nagesh Anil Gopnarayan V/s. State of Maharashtra)

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. 1107/2020 registered at Kondhwa Police Station for the offence punishable under sections 363, 366, 376(n) of the Indian Penal Code and under sections 4,6,8,11,12 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that father of victim aged about 17 years 5 months 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. They were ready to marry with each other but family members of victim opposed relationship, so on 22.10.2020 they went at Khandoba temple near their house and married with each other. On 27.10.2020 applicant met victim and asked to run away for marrying. At about 5.00 pm they both went away at Yerwada, then to Akola by private bus, then at Shegaon, then at Shirasgaon Nile at the house of sister of applicant, then at Khamgaon and resided in tin shed for 8 to 10 days. During that period, applicant did not commit sexual intercourse with victim, but during medical examination of victim it revealed that there is evidence of vaginal penetration. In her supplementary statement, victim stated about repeated sexual intercourse by applicant 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. There is delay in lodging report.

Investigation is practically over. Applicant is 22 years old and doing service. His family members are depending on him. He is temporarily resident of Kondhwa, Pune and permanently at Ghusar, Tal & Dist-Akola. He has no criminal antecedents. 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. So, they prayed to reject the application.

5] Allegations against the applicant are serious. Applicant is sufficiently interrogated. From statement of victim role attributed to applicant can be gathered. It revealed that due to love affair victim and applicant were meeting each other. They married in one temple and later on on 27.10.2010 they both left the house went to Yerwada, then Akola, then at Shegaon, then at Shirasgaon Nile at the house of sister of applicant and then at Khamgaon and resided in tin shed for about 8 to 10 days. Victim never stated about sexual intercourse by applicant with her. However, after medical examination of victim, it revealed that there is evidence of vaginal penetration. In supplementary statement victim stated about repeated sexual intercourse by applicant with her. Victim is more than 17 years old and applicant is 22 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 authority 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.

7] Ratio laid down in above cited ruling is noted. In medical papers victim gave history of love affair, they both eloped to Akola and resided together, there was history of multiple penetrative consensual vaginal intercourse with her consent. There are no injuries on any part of body of victim. Victim resided with applicant for considerable period without complaining. These are mitigating circumstances. Moreover, considering nature of offence and allegations, investigation is practically over. Personal custody of applicant is not required. He is only 22 years old and doing service and his family members are depending on him. He is temporarily resident of Kondhwa, Pune and permanently at Ghusar, Tal & Dist-Akola. 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 Nagesh Anil Gopnarayan 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 Kondhwa 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 meet, 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 – 19.01.2021.

(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	- 19.01.2021.
Order signed by P.O.	- 19.01.2021.
Order uploaded on	- 20.01.2021.