

ORDER BELOW EXH.1

(Anil Shankar Mallav V/s. State of Maharashtra & ors.1)

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

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. 1070/2020 registered at Lonikand Police Station for the offence punishable under sections 363, 366, 376 r/w. S. 34 of the Indian Penal Code and under sections 4, 17 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that mother of victim aged about 15 years 1 month lodged report of her kidnapping. During investigation and after recording statement of victim it revealed that she was acquainted with present applicant Anil. He asked her to marry by running away, so she left home, made phone call to present applicant, he came, then he called other accused Umaji, they all went at hill near Golegaon and resided at Dargah. Applicant took her in room near Dargah and committed forcible sexual intercourse with her, other accused used to watch outside room so that nobody should come.

3] According to applicant he is falsely implicated in this matter. Applicant never committed sexual harassment of victim. According to him, victim was with him. Other allegations are false. There is love affair between victim and applicant. Victim left the house at her own accord. So, offences u/s. 363, 366A, 376 of Indian Penal Code and S. 4,17 of Protection of Children from Sexual Offences Act are not attracted against him. He is only 22 years old and doing agricultural work. He is permanently resident of Hingangaon, Haveli, 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. They are resident of same village, so 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 they both were acquainted to each other and talking with each other, but applicant asked victim to marry by running away. On 19.12.2020 victim came on road out of house and applicant came along with motorcycle with his friend i.e. other accused. Applicant took victim at hill area in Golegaon village, Tal-Shirur near one Dargah. Applicant forcibly took victim in room near Dargah and under pretext of marriage he committed sexual intercourse with her. Other accused was watching outside the room so that nobody should come. Statement of victim u/s. 164 of Cr.P.C. is recorded, in which she made similar allegations about forcible sexual intercourse by applicant with her. Advocate of accused submitted that it is case of love affair. Victim left the house at her own accord. Victim is more than 15 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 Advocate of applicant relied 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 relationship and history of two episodes of consensual vaginal penetrative intercourse. Doctor opined that there is evidence of vaginal penetration. It is material to note that though such type of history is narrated by victim, in her statement before police and u/s. 164 of Cr.P.C. there are allegations of forcible sexual intercourse by applicant with her. Moreover, prima facie in view of her age her consent is not material. Investigation is still in progress. Applicant and victim are residing in same village. Other accused though released on bail, role attributed to him is different, so there is no ground of parity. First informant specifically stated that there is possibility of harassment by present applicant due to their residence. In such circumstances, as investigation is still in progress, 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 -04.02.2021.

(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	- 04.02.2021.
Order signed by P.O.	- 04.02.2021.
Order uploaded on	- 05.02.2021.