

**ORDER BELOW EXH.1 IN CRIMINAL MISC. APPLICATION
NO.1178/2022 KUNAL VS STATE.**

The applicant/accused has prayed for grant of bail under Section 439 of Code of Criminal Procedure, 1973 (Cr. P.C.), in Crime No.199/2022 registered with the Police Station Ashti, Tq. Partur, for the offences punishable under Sections 363, 366, 376(2)(n) of the Indian Penal Code, 1860(IPC) and Section 4,8, 12 and 17 of the Protection of Children From Sexual Offences Act, 2012(POCSO).

2. The prosecution has come with the case that, initially an FIR dated 12/09/2022 was lodged by the father of the minor. The age of the minor is 17 years. The FIR was with the allegation of kidnapping by an unknown person. Thus, initially the crime was registered for an offence under Section 363 of IPC. During the course of the investigation, the police learnt about the hiding place of minor and the applicant. As per the statement of the minor for almost 3 to 4 years, she was in relationship with the applicant. The applicant even had provided one mobile phone to the minor. Even, in the month of July 2022, the minor had eloped with the applicant. But those were brought back by the family members of the minor and the applicant. On 10/09/2022, the applicant made several phone calls to the minor and reported that his family members were arranging his marriage with another girl. But the applicant was interested to marry with the minor. During those conversations the applicant expressed his desire to go to Mumbai to perform marriage. The minor was asked to leave the house at the night. Accordingly, the applicant picked up the minor with the assistance of his friends i.e. other accused. The minor was taken to Bhivandi, Dist. Thane. For almost 15 days, the minor resided with the applicant. During that stay the applicant had sexual intercourse with the minor

despite there was protest by the minor. The minor protested and conveyed that before marriage she would not allow the applicant to have sexual intercourse.

3. As such the prosecution has come with the case that considering the age of the minor as 17 years, the applicant committed penetrative sexual assault/rape on her repeatedly.

4. It has been contended that, the applicant did not commit any offence as alleged by the prosecution. Reading the remand yadi, it becomes apparent that the minor is of understanding age. the age of the applicant as 20 years is also a factor in his favour. It is the case of a love affair between two young persons. Practically investigation warranting further detention of the applicant has been completed. Thus, the applicant has prayed for grant of bail. The applicant has undertaken that he shall abide every condition imposed by the Court.

5. The prosecution by its say has opposed the application. Apart from contending in tune with the above noted prosecution case, it has contended that, considering the past history, there are imminent possibilities that the applicant may commit a similar type of offence, may tamper with the prosecution evidence and pressurize or induce the prosecution witnesses. Thus, the prosecution has prayed for rejection of the application.

6. I have heard Mr. N.M.Mhaske, the learned counsel for the applicant and Mr. B.V.Inlge, the learned P.P. for the prosecution at length. Both have submitted as above. Hence, their submissions have not been noted in detail except necessitated as below.

7. With assistance of Shri Ingle, I have perused the investigation papers placed on record by him, so far.

8. As per the school leaving certificate placed on record, the

minor is 17 years of age. Hence, definitely as per law laid down in the matter of S. Varadrajan, the minor is of understanding age. Again this was the second time by the applicant and the minor to be on run. As per the statement of the minor, it can be inferred that she always wanted to be with the applicant. Except the protest exhibited by the minor for the first intercourse, there is nothing which can be treated as against the applicant, if the age of the minor is ignored. However, the fact remains that as the minor is a child within the meaning of POCSO, there cannot be a legal consent. Hence, by having strict application of law, definitely at least prima facie the applicant committed an offence of penetrative sexual assault/rape that too with its aggravated form. However the age of the applicant is a factor in his favour. Practically investigation warranting further detention of the applicant is completed. The apprehension raised by Mr. Ingle can be taken care of by putting certain stringent conditions on the applicant.

9. In view of the above discussion, I am inclined to allow the application subject to conditions as per the operative order and proceed to pass the following order.

ORDER

- (i) Applications CMA No. 1178/2022 is hereby allowed.
- (ii) Applicant Kunal Ramesh Tayade be released on bail in CR No.199/2022 registered with the Police Station Ashti, Tq. Partur for the offences punishable under Sections 363, 366, 376, 376(2)(n) of IPC and Sections 4, 8, 12 and 17 of POCSO on furnishing PR bond of Rs.15,000/- and surety of the like amount.
- (iii) The applicant shall not enter within the limits of Daithana Kh. Tq. Partur, Dist. Jalna until further order or till filing of report under Section 173 of Cr.P.C. whichever is later, without the permission of the court.
- (iv) The applicant shall not try to have contact with the minor till filing of a report under Section 173 of Cr.P.C. or until

further order whichever is later, by whatever mode including on social media.

- (v) The applicant shall abide all the conditions under Section 437(3) of Cr.P.C.

Date : 02/11/2022.

(A.L.Tikle)
Addl. Sessions Judge-2
Jalna.

Certificate

I affirm that the contents of this PDF file are word to word as per original order.

Name of Steno : S.P.Gavhane
Name of Court : Dist. Judge-2 & ADJ Jalna.

Signature.

C E R T I F I C A T E

I affirm that the contents of this PDF file are word to word as per original Judgment.

Name of Stenographer	-	S. P. Gavhane
Name of the Court	-	District Judge - 2, Jalna

Signature of Stenographer

