

MHAU040007212025



ORDER BELOW EXH.5 IN SPECIAL CASE NO. 44/2025

The State Vs. Saurabh Balu Phulare

1] Applicant Saurabh Balu Phulare has moved this **regular bail application** vide section 482 of B.N.S.S., 2023 in connection with crime no. 204/2025 under section 64(1), 75, 137(2) of BNS, 2023; & 3(2)(w)(i)(ii), 3(2)(va), 3(2)(v) of SC & ST Act; and 4, 8 & 12 of the POCSO Act registered with Vaijapur police station.

2] I have read the grounds mentioned in the application. The Investigating Officer and the Ld. APP opposed the application vide common say.

3] **Concise story of the prosecution case is as under :-**

On 24.04.2025 informant / mother of victim lodged the report. It is alleged that, on 21.04.2025 at about 7.00 p.m. accused eloped her minor daughter / victim. Hence, missing complaint was lodged.

Amid investigation victim and accused traced and statement of victim was recorded, wherein, she disclosed that she has love affair with the accused. But, her parents were not ready to perform their marriage since they belong to different caste. Hence, on 21.04.2025 the accused eloped her and they went to different places through railway and they stayed at railway station. She stated that, during their stay they had no physical relation and she denied for medical examination. She was kept in rehabilitation center by the Child Welfare Committee since the custody of the victim was denied

by her parents. Later on, she was given in custody of her parents and subsequently, her supplementary statement was recorded wherein she has stated that, accused established physical relationship with her and she was medically examined. Hence, the FIR.

4] Post receipt of notice, victim and informant appeared before the Court and orally as well as vide Exh.7 submitted no objection to release the accused on bail subject to condition that accused will not enter in the vicinity and will not do any illegal act and will not cause trouble to them.

5] Heard the Ld. Advocate for the applicant/accused. He submitted that, the victim is 16 years & 3 months old and she eloped with the accused. As no allegations related to caste, hence, provisions or offence punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act does not attract. The informant denied the custody of the victim. The accused neither attempted or committed any sexual assault. The accused and victim had love affair hence, the victim herself denied to go with the informant. The accused is arrested on 28.04.2025 and remanded in MCR on 29.04.2025 and since then he is behind the bars. With this, he prayed to allow the application.

6] Per contra, learned A.P.P by filing reply strongly opposed the application and submitted that, the offence is serious in nature. The accused and the victim are belong to different caste. If the accused is released on bail, possibility of tampering the prosecution evidence, can not be ruled out. With this, it is prayed to reject the application.

7] Having heard submission and considering the facts of the case, prima-facie it appears from the charge-sheet that, the victim is 16 years & 3 months old and accused is 21 years old. The offences are non-bailable and triable by Special Court.

8] It appears that, the accused is arrested on 28.04.2025 and and remanded in MCR on 29.04.2025 and since then he is in jail. The allegations made by the informant that, the accused eloped her on 21.04.2025 and took her to Pune. But, it is significant to note that, in the FIR itself it is mentioned that, parents of accused had been to the house of informant and told that, something was going on between the accused and the victim and gave understanding to the victim. Thereafter, informant had given understanding to the victim, inspite this, accused and victim eloped.

9] Further, the statement recorded under section 180 and 183 of BNSS, 2023 show that, the victim has not made any allegation of kidnapping against the accused. Neither she has made allegation of sexual harassment nor of rape. However, on 28.04.2025 in her supplementary statement she has stated that, she herself eloped with the accused and she has love affair with the accused. The accused had once established physical relationship with her when he had been to the house of the victim. Pursuant to the same her medical examination was conducted.

10] The victim has caused her appearance along with her mother in response to the notice and has submitted no objection to release the accused on bail. Thus, considering the aforesaid facts it is apparent that the victim herself eloped with the accused. Thus, under

such circumstances the allegations leveled against the accused under section 137(2) of BNS, 2023 prima-facie does not attract. In the case of *S.Varadhrajan Vs. State of Maharashtra reported in AIR 1965 Supreme Court 942*, Hon'ble Supreme Court held that,

“There is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstances can the two be regarded as meaning the same thing for the purposes of S. 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.”

11] Further, in the supplementary statement the victim has alleged that, the accused once had been to her house and established physical relationship. Even in the medical examination report she has stated that prior to two months from the date of incident the accused had established physical relationship with her in the house. Under such circumstances, considering the age of victim and the facts of the case since the investigation is completed further detention of the accused is not warranted as the trial will take its own time.

12] It prima-facie shows that, there was love relations between the accused and informant. I am aware of the fact that, the

Court is not expected to conduct mini trial at the stage of deciding bail application but, prima-facie the allegations are required to be considered in order to decide the merit of the bail application. Although the offence under section 3(2)(w)(i)&(ii), 3(2)(v), 3(2)(va) of SC & ST Act are alleged against the accused but, the aforesaid offence will be part of merit of final trial.

13] Having considered the aforesaid facts, the accused is jail since 28.04.2025 and the say of I.O. depicts that, the medical examination of the informant is already completed. The CA sample is already conducted. The statement of witnesses are already recorded. The objection to release the accused is only on the ground that, there are chances of commission of similar offence and tampering & hampering of witnesses. But, since the charge-sheet is filed further detention only on that objection is not justified. The alay raised by the prosecution can be taken care by imposing stringent conditions.

14] It is settled position of law that bail is rule and jail is exception. The trial will take its own time. No justified ground made for further detention of the accused. There are no criminal antecedents against the accused. Nothing is to be recover and discover at the hands of the accused. Therefore, pre-trial detention of the accused is not warranted. Accused is permanent resident of Aurangabad District. Therefore, there are no chances of fleeing away. Thus, considering the role of accused as well as punishment prescribed for the offence, accused can be released on bail. Accordingly, I proceed to pass following order :-

ORDER

- 1 Application Exh.5 is allowed.
- 2 Applicant / accused Saurabh Balu Phulare in connection with crime No. 204/2025 under section 64(1), 75, 137(2) of BNS, 2023; & 3(2)(w)(i)(ii), 3(2)(va), 3(2)(v) of SC & ST Act and 4, 8 & 12 of the POCSO Act registered with Vaijapur police station, be released on bail on executing PR bond of Rs.50,000/- with one solvent surety of like amount.
- 3 The applicant / accused is hereby directed to the Court regularly.
- 4 The applicant /accused is further directed to submit a list of at least three blood relatives with their detail residential addresses and also the addresses of their place of work with documentary proof of showing the correctness of the details produced by them.
- 5 The applicant / accused is also directed that he and his sureties should submit copies of at least two documents amongst their respective Passport, Pan Card, Bank Passbook, Credit Card with photograph, Ration Card, Adhar Card, Electricity Bill, Landline telephone bill, Voter I.D. Card issued by the Election Commission of India and Property Tax Register while furnishing the bail.
- 6 The applicant /accused shall not tamper with the prosecution evidence in any manner and shall not indulge in any type of criminal activity. If it is noticed that he involved in such type of offence the prosecution will be at liberty to move for cancellation for bail.
- 7 The applicant/accused shall not change the place of residence without prior intimation to the concerned police station.
- 8 Any observation made in this order is made only for limited purpose of deciding this bail application and it shall not come in the way of trial during the trial.

Date : 18.07.2025

(Smt. S. K. Upadhyay)
Additional Sessions Judge,
Vaijapur, District Aurangabad.