

Special Case No. 42/2020.

: Order Below Exh. 4 :

1. This is an application for regular, under sec. 439 of Code of Criminal Procedure.

2. The accused is involved in C.R. No. 34/2020 of Pimpalgaon Baswant police station, registered under sec. 376(1), 506 of Indian Penal Code and 4, 8, 12 of POCSO Act. The child girl, Anushka, is 17 years old college going girl, studying in B.P. Patil College, Pimpalgaon Baswant and use to attend the college, from village Pachore by S.T. bus. The accused, Shahrukh Mulani, was also travelling by the same bus and attending the college. At the time of Diwali, 2018, the accused developed intimacy with Anushka and started demanding sexual contact. The victim girl was refusing but the accused gave threats of finishing her family and defaming her in the society. So, Anushka frightened and the accused started exploiting her sexually, some times in Baba Complex, lonely place, and some times at the house of Anushka itself, whenever she was alone. As a result of sexual intercourse, Anushka remained pregnant and when she felt pains in the abdomen, she was taken to Doctor and on sonography, it was found that, Anushka was carrying pregnancy of 17 weeks. So, she was asked the reason and she gave the name of present accused. So, complaint was lodged in police station and the accused was arrested on 20/03/2020. Since then, he is in jail.

3. Now, he submits that, he has not committed forcible sexual intercourse but, there were love relations between them and the parents of Anushka were opposing their relations. Therefore, he is falsely involved in the case. Nothing was recovered from him. His physical custody is not needed. Alrady investigation is over and charge sheet is also filed. Now, he is ready to furnish the bail and he will abide the conditions if imposed. So, requested to grant the bail.

4. The State has resisted application in its say and submitted that the accused is Muslim by caste and Anushka is non-Muslim. In case, bail is granted, there will be communal tension in the village and accused may pressurise the victim. Yet DNA report is not received. However, there is strong evidence against the accused and he is not entitled for bail. So, requested to reject the application.

5. Heard both the parties. Perused the papers. The accused has filed the copies of chatting with victim, on mobile phone, to show that, there was no force and they were in love relations. The photograph of selfie is also produced, on record, to show their love relations. Since the love relations were disclosed due to pregnancy, he is falsely involved in the case. Now, he is ready to furnish the bail.

6. The victim, Anushka, is 17 years old girl. She knows the consequences of her relations with accused. She has attained the age of puberty. She had submitted herself for sexual intercourse and also in love relations, for long period, with the accused.

7. In the case of **Sunil Mahadev Patil Vs. State of Maharashtra**, reported {(2016) 3 BOM CR (CRI) 435}, it is observed that,

“Today teenagers are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and a woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get in to such kind of relationship. Sexual urge differs from person to person and there cannot be any mathematical formula in respect of sexual behavioral pattern of teenagers, as biologically whenever the child turn in to puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all

considered as a sexual maturation. Therefore, some sects with view to regularize sexual behaviour of the community have acknowledged this biological factor and therefore, the early age marriages are performed in some religions or communities. Taking in to consideration this social and biological factors, the law makers have considered the age of 15 as age of consent when the marriage is performed. Taking in to consideration this background, the trial judge has to pass an order of bail in such cases”.

8. In view of these observations, if the case at hand is considered, then, the victim girl has attained the age of 17 years and boy is also of 20 years. So, their physical attraction is natural and as a consequences of their relations, victim remained pregnant. There is no case of one time rape, is lodged, against the accused and it is a result of long standing love relations. That cannot be termed as rape and applicant is entitled for bail. Hence, order.

: Order :

1. Application is allowed.
2. The accused, Shahrukh Fakir Mohammad Mulani, be released on furnishing bail of Rs. 25,000/- with one or more sureties, in C.R. No. 34/2020, registered under sec. 376(1), 506 of Indian Penal Code and 4, 8, 12 of POCSO Act, of Pimpalgaon Baswant Police station and condition not to keep relations with victim till completion of trial.

Place : Niphad.
Date : 01/07/2020.

(P.D. Digraskar)
Additional Sessions Judge,
Niphad.