

ORDER BELOW EXH.1

1] Perused application and say. Heard Advocate for applicant and APP for the State. Notice issued to 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.180/2020 registered at Talegaon Dabhade Police Station for the offence punishable under sections 363, 376 of the Indian Penal Code and under sections 4,6 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that father of victim aged about 16 years 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 meeting each other. When first informant learnt about the same, he convinced victim and also beat applicant. On 29.3.2020 victim made phone call to applicant. Then on 30.3.2020 she went to meet applicant at his room and asked him to run away with her. Thereafter, they both went at one hill and then stopped at highway at village Urse. They resided in village Urse in rented room where applicant committed sexual intercourse with victim repeatedly.

3] According to applicant he is falsely implicated in this matter. It is a case of love affair. Victim is more than 15 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. Applicant is 19 years old and student and pursuing his career. He is student/freelancer and earning member of his family. He is permanently resident of Trimohini, Tal-Hili, Dist-Dakshin Dinajpur, State West Bengal and temporarily resident of Ursel, Tal-Maval, Dist-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. Statement of victim u/s. 164 of Cr.P.C. is recorded. Victim and applicant are resident of same locality, so there is possibility of tampering prosecution evidence to victim and witnesses. There is possibility of the absconding of applicant. 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. When father of victim learnt about the same he beat applicant. Victim herself made phone call to applicant on 29.3.2020 and then on 30.3.2020 she went to meet him at his room, asked him to run away with her, they both went at hill area and highway of Urse village, resided in rented room and applicant committed sexual intercourse with her repeatedly. Victim is about 16 years old and applicant is 19 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 (i) ***S. Varad Rajan Vs. State of Madras reported in AIR 1965 SC 942***, in which it is observed that even though word “taking” and “enticing” have two different connotations, yet neither of two expressions contracts the case when girl by her own accord comes out of custody of her guardian.(ii) **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.

(iii) **Mahesh Balkrishna Dandane Vs. State of Maharashtra reported in 2015 ALL MR (Cri.) 2805**, in which it is observed that every breach of promise to marry cannot be said to be either cheating or rape. Whether relationship between parties were consensual or not is to be tested independently depending on facts and circumstances of case.

7] Ratios laid down in above cited ruling are noted. Victim refused for medical examination. From statement of victim it prima facie revealed that she herself went away with applicant and resided with him for considerable period without making complaint. These are mitigating circumstances. Moreover, considering nature of offence and allegations, investigation is practically over. Personal custody of applicant is not required. He has no criminal antecedents. He is only 19 years old, student and freelancer and his family members are depending on him. He is permanently resident of Trimohini, Tal-Hili, Dist-Dakshin Dinajpur, State West Bengal and temporarily resident of Ursel, Tal-Maval, Dist-Pune. 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 Sujeet Motilal Mahato 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 Talegaon Dabhade 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 – 12.6.2020.

(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	- 12.6.2020.
Order signed by P.O.	- 12.6.2020.
Order uploaded on	- 17.6.2020.