

ORDER BELOW EXH.1

1] Perused application and say. Heard Advocate for applicant and APP for the State.

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. 150/2020 registered at Nigdi Police Station for the offence punishable under sections 363, 366(A), 376(2)(j)(n), 323, 504 of the Indian Penal Code and under section 3,4,11,12 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that victim aged about 17 years 11 months lodged report stating that she is acquainted with applicant since 2017. They became friends and were chatting with each other, then there was love affair between them. However, due to difference in caste, her family members opposed the relationship. They were not allowing her to go outside and to meet applicant. But, victim threatened applicant to take her with him, otherwise she will commit suicide. Therefore, applicant came to meet her in February-2020. At relevant time, father of victim lodged Missing Report, but victim did not make allegations of sexual assault by applicant.

3] It is further case of prosecution that on 21.2.2020 applicant made phone call to her and asked her to marry with him, victim went to meet him near school at Chinchwad and from motorcycle they went to flat of friend of applicant and resided there for 4 days. During that period, applicant committed sexual intercourse with victim under pretext of marriage. Thereafter, victim went to meet her friend at one hostel and victim, her friend, her friend's brother wandered at Marine Drive, by seeing their photographs applicant abused and beat victim and forcibly took her at room of his friend and forcibly committed sexual intercourse with her by

beating her.

4] According to applicant he is falsely implicated in this matter. It is a case of love affair. Victim is more than 17 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. Parents of victim opposed the relationship due to caste difference. There is delay in lodging report. After lodging report victim made phone call to applicant. Applicant is sufficiently interrogated and he is only 22 years old and doing labour work. He is permanently residing at Chikhali, Pune. He has no criminal antecedents. He is ready to abide the conditions. Hence, he prayed to release him on bail.

5] APP and I.O. objected this application on the ground that investigation is in progress. Previously offence u/s. 363 of Indian Penal Code was filed against applicant. Thereafter also applicant kidnapped victim. Statement of victim u/s. 164 of Cr.P.C. yet not recorded. Applicant will pressurize victim and witnesses. There is possibility of tampering prosecution evidence. There is possibility of the absconding of applicant. So, they prayed to reject the application.

6] 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 since 2017. In February-2020, victim made phone call to applicant and went away with him, at relevant time Missing Report was filed by her father, but there were no further allegations of sexual assault. On 21.2.2020, applicant made phone call to victim and they both went at flat of his friend, applicant committed sexual intercourse with victim under pretext of marriage, act was repeated. Thereafter, by

seeing photographs of victim with her friend and friend's brother, applicant beat, abused her and kept forcible sexual intercourse with her. Victim is more than 17 years old and applicant is 22 years old. Victim has attained age of sufficient maturity and knows the consequences of act.

7] In this context Advocate of applicant relied on authorities cited in **(i) 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.

(ii) **Sunil Mahadev Patil Vs. State of Maharashtra reported in 2016 All MR (Cri.) 1712**, in which it is observed that if statement of prosecutrix and witnesses shows that they were in love relationship with each other they eloped and went to temple and performed marriage, they started residing together in the house of relative then there are mitigating circumstances. Moreover, it is observed that factor i.e. age of prosecutrix, whether act is violent, whether there are antecedents or not, whether offender is capable of repeating the act or

not, whether there is likelihood of threats or intimidation if at all the boy is released, whether chance of tampering with material witnesses and age of the applicant and his employment and plan, stabilize and secure his future are to be taken into consideration while deciding bail application, when boy and minor girl are in love with each other.

(iii) 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.

8] Ratios laid down in above cited ruling are noted. In Medical report victim gave history of love relationship since 2 years and history of consensual penetrative vaginal intercourse multiple times. There are no injuries on person of victim. Victim did not complain since beginning and though she was with applicant for considerable period. These are mitigating circumstances. Moreover, investigation is practically over. Personal custody of applicant is not required. He has no criminal antecedents. He is only 22 years old and doing labour work. He is permanently residing at Chikhali, 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 Vishal Lalu Rathod be released on executing P.R. bond of Rs.30,000/- with one or two solvent sureties in the like amount.
- 3] The applicant shall not tamper the prosecution evidence in any

manner.

- 4] The applicant shall attend Nigdi 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 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.

Sd/-

Pune.
Date – 01.6.2020.

(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	- 01.6.2020.
Order signed by P.O.	- 01.6.2020.
Order uploaded on	- 02.6.2020.