

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. 166/2020 registered at Wanwadi Police Station for the offence punishable under section 363, 366A, 376, 376(2)(n) of the Indian Penal Code and under sections 4, 8, 12 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that mother of victim aged about 17 years lodged report of her kidnapping against unknown person. During investigation and after recording statement of victim it revealed that she was acquainted with applicant since childhood and there was friendship between them. When she was studying in 11th standard, applicant proposed her and they were meeting each other. Applicant kept sexual relationship with her though she refused, but applicant promised to marry with her and act was repeated for about one year. After November-2019 victim missed her menstrual cycle, so sonography was conducted in March-2020 and it revealed that she was 13 weeks pregnant. Victim then went with applicant and on 16.3.2020 they both married with each other. They started residing in the house of applicant. Later on, police apprehended them.

3] According to applicant he is falsely implicated in this matter. It is a case of love affair. Applicant never forced victim. Victim has attained sufficiently maturity. She is more than 17 years old therefore, she knows the consequences of the act. They performed their marriage. Moreover, investigation is practically over. Applicant is 22 years old. He is resident of Hadapsar, 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. Applicant and victim are married with each other, in that regard investigation is going on. Statement of victim under Section 164 of Cr. P.C. yet not recorded. Applicant will pressurize victim and witnesses. There is possibility of tampering prosecution evidence. 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 relationship, victim and applicant were meeting each other and applicant kept sexual relationship with victim. Act was repeated by giving promise of marriage and after November-2019 victim missed her menstrual cycle and pregnancy was detected in March-2020 and then report was filed on 07.4.2020. So, it appears that about the incident which took place for about 1 year, report is filed after one month after detecting pregnancy. Medical report of victim is on record showing pregnancy of about 19 weeks. In medical report, victim gave history of love relationship between her and applicant and history of multiple episode of vaginal sexual intercourse with applicant since about one year. Victim is 17 years old and applicant is 22 years old. Victim has attained age of sufficient maturity and knows the consequences of act.

6] In this context it is necessary to rely on authority cited in **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.

7] Ratio laid down in above cited ruling is noted. Medical report of victim shows history of love affair and consensual sexual intercourse. Victim did not complain since beginning. There are no injuries on any part of body of victim. Certificate of marriage is on record. Considering statement of victim, medical certificate, history given in it, there 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. He is permanently residing at Hadapsar, 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 Nelson Wilson Barnabus 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 Wanwadi 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 – 16.5.2020.

(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	- 16.5.2020.
Order signed by P.O.	- 16.5.2020.
Order uploaded on	- 16.5.2020.