

ORDER BELOW Exh. 1 IN CRI. SPL. M.A. No. 75 OF 2013.

The police of Vadgaon Mawal police station arrested applicant in CR No. 102/2013 relating to offences punishable under S. 376, 366, 376 of IPC, S. 7,8 and 12 of The Protection of Children from Sexual Offences Act, 2012 and S.3(1)(12) of the Scheduled Castes and Scheduled Tribes, (Prevention of Atrocities) Act, 1989. The applicant prayed for bail by putting regular grounds like innocence, false implication etc. It is submitted that there was love affair in between applicant and minor victim. It is submitted that there are no allegations of force or threat against applicant in alleged act of sexual intercourse. The girl is at the verge of majority and, therefore, no offence is committed. Lastly, it is submitted that the investigation is practically complete, hence applicant is entitled for bail. The State resisted bail by putting say on the application itself. It is contended that the offence is of serious nature and name of applicant is mentioned in FIR. There is medical evidence about sexual intercourse, hence applicant is not entitled for bail.

2] Heard both sides and gone through police papers. The complaint is lodged by father of victim girl on 22-6-2013. He stated that on 1-6-2013 his daughter aged 17 years went missing from his house. On the following day, he lodged missing report with the police. He suspected that the applicant who is nearby resident had kidnapped the minor, hence initially offence was came to be registered under S. 363 and 366 of the Indian Penal Code. It reveals from police papers that after apprehending minor from the custody of accused, the police have repeatedly recorded statements of victim girl. As per statement of victim dated 3-6-2013, both of them initially went to Talegaon to celebrate birth day of accused. They stayed in lodging house but there was no physical intercourse. Then by public transport, they went to Pimpri and then to Satara. They stayed in lodging house for two days. Thereafter they stayed in the

house of sister of Sunil Kanse at Shindewadi, Karad. On 11-6-2013, accused promised victim to marry and there was consensual sexual intercourse. According to the victim, they continued to stay at said place but on 30-6-2013 police came and apprehended them. There is one another statement of the victim girl of the same day. In the said hand written statement victim girl stated that she was having love affair with accused and there were no physical relations. She requested police that they should not bother her. Then again there is one statement of victim of the same date i.e. 30-6-2013. In said statement, she narrated the story as per first statement which I referred earlier. On perusal of police papers it is revealed that on 06-07-2013, one another statement of victim is recorded by police. In said statement, she added that accused was insisting for marriage but she refused for marriage as she is not of marriageable age. In said statement, she said that she was not allowed to make a mobile call to anybody. However, she stated that during their stay at Karad, accused was attending some work for livelihood and she used to remain at house.

3] After going through all the police papers, it is undisputed that victim is 17 years and 5 months old at the time of occurrence. School leaving certificate of victim is produced on record from which it is evident that she was at the age of discretion. The story unfolds that the victim and accused were having love affair and both of them voluntarily left the house of victim and stayed at different places for the duration of one month. Prima-facie, it reveals that the victim was not in confinement as they travelled by public transport as well as lived in the family of the acquainted persons. The victim never said that the accused either pressurized her or threatened her while committing sexual intercourse. The multiple statements of victim are recorded by police wherein it is exposed that there was love affair and the girl refused for marriage.

One of the statement dated 30-6-2013 says that there was no sexual intercourse. Though medical certificate is produced, there is no evidence about forcible sexual intercourse.

4] The learned Advocate for applicant submitted that when the girl is at the age of discretion and lived with accused at various places, then the accused can be released on bail. In this regard, he relied on reported case of **Pravin Ashok Rakh Vs. State of Maharashtra, 2007 (1) B. Cr. C. 228**. In said case then prosecutrix was 14 years of age and had stayed with accused for several days at various places. In the situation, the Hon'ble High Court has released the then accused of rape case on bail. Secondly, applicant relied on reported case of **Sayed Malloomiyah Sayed Vs. State of Maharashtra, 2004(2) Bom. C. R. (Cri) 294**. In said case, the girl was of 16 years of age and the police paper indicates that she was consenting party. Therefore, Hon'ble High Court observed that whether the victim was minor or nor can be decided at evidence stage but accused was released on bail. Lastly, applicant relied on reported case of **Santosh R. Nikam Vs. State of Maharashtra, 2010 ALL MR (Cri) 693**. In said case there was delay of one month for lodging FIR and the intercourse was by consent, hence the accused was released on bail. After taking summary of these reported judgments, it is evident that if the girl is at the age of discretion and there are no allegations of force or threat, then the accused can be released on bail. In present case, the applicant/accused was came to be arrested on 30-6-2013. Thereafter he has faced custodial interrogation. It reveals from police papers that during the span of last nearabout two months the police have recorded statements of all the witnesses. Medical examination was conducted as well as call detail record was collected. The clothes are came to be seized. Thus the process of investigation is practically complete. Taking into account all these

factors and particularly the age of victim as 17 years and 5 months and the absence of force or threat, I deem it fit to release applicant on bail by imposing certain conditions. Hence order.

ORDER

- 1] Application stands allowed.
- 2] The applicant is released on bail, on his executing PR bond of Rs. 30,000/- with one or two sureties of like amount.
- 3] The applicant shall attend concerned police station on every Sunday in between 10 a.m. to 12 noon, till filing of charge sheet.
- 4] The applicant shall not enter within the limits of Taluka Vadgaon Mawal except the period of attendance to police station, till conclusion of trial.
- 5] Applicant shall not tamper with the prosecution evidence in any manner.
- 6] The applicant shall provide his detail residential address and cell number, if any, to the Investigating Officer and shall not change the same without prior intimation to the Investigating Officer.

Pune,

Dated/- 21-08-2013.

(Vinay G. Joshi)
Additional Sessions Judge, Pune.

"I affirm that the contents of this PDF file Judgment are same word for word as per original Judgment.

Name of Steno : Shri. V. V. Bannur. Personal Assistant. Court Name : Shri. V. G. Joshi, District Judge, 01, Pune. Judgment Signed by P.O. on 21-8-2013: Judgment uploaded on :- 21-8-2013 Date of PDF file : 21-8-2013