

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. 612/17 registered at Pimpri Police Station for the offence punishable under sections 376,376(n) of the Indian Penal Code and under sections 3,4,5(j)(2),6 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that victim and applicant resides in same locality, got acquainted with each other. Since 04.01.2017 till May-2017 applicant committed forcible sexual intercourse with victim under pretext of marriage. Victim became pregnant and delivered girl child.

3] According to applicant he is falsely implicated in this matter. This is the case of love affair between victim and applicant. Her parents opposed the relationship. Victim is more than 17 years and well educated. There is delay of substantial period in lodging First Information Report. Applicant is resident of Chinchwad, Pune and has no criminal antecedents. He is ready to abide the conditions and prayed to release him on bail.

4] APP and I.O. objected this application on the ground that applicant will pressurize victim and witnesses. He will tamper prosecution evidence. Investigation is in progress. Due to act of applicant victim became pregnant and delivered child. So, they prayed to reject the application.

5] Allegations against the applicant are serious. From the statement of victim it appears that she got acquainted with applicant since 9th std. They were having love affair and meeting each other. In

January-2017 applicant committed sexual intercourse forcibly with her under pretext of marriage. Thereafter also they met each other and act was repeated. Victim became pregnant and delivered girl child. Medical papers of the victim shows that applicant and victim had love affair and applicant had sexual intercourse by giving promise to marry her.

6] Victim is 17 years old, applicant is 21 years old. Victim has attained age of sufficient maturity and can understand consequences of the act. In spite of first incident, she met applicant. In this context Advocate of applicant relied on following authorities -

i] ***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 actor 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.

ii] ***Satyam Ramchandra Fulore Vs. State of Maharashtra reported in 2015 All M.R. (Cri.) 2785***, in which it is observed that if victim was in love with applicant and no history of sexual or physical assault revealed from the medical examination, victim being 16 years old had attained age of understanding, prima-facie case is made out for grant of bail.

iii] *S. Varad Rajan Vs. State of Madras reported in AIR 1965 SC 1942*, 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.

7] Ratios laid down in above cited rulings are noted. It is submitted on behalf of applicant that applicant is ready to accept victim and girl child as he is having love affair with victim. From the statement of victim, it appears that since January-2017 till May-2017 they were meeting each other. Considering these mitigating circumstances and as applicant is resident of Chinchwad, Pune, no purpose would serve by keeping applicant behind the bar. Applicant has no criminal antecedents. Due to all above reasons and as applicant is resident of Pune, application deserves to be allowed with following order -

ORDER

- 1] The application is allowed.
- 2] The applicant Sunil Hiralal 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 Pimpri 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.

Pune.

(R.V.Adone)

Date – 08.12.2017.

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	- S.V.Thakar,
Court Name	- Smt. R.V.Adone, Addl.Sessions Judge,Pune.
Date of Order	- 08.12.2017
Order signed by P.O.	- 08.12.2017
Order uploaded on	- 16.12.2017

