
(2014) 09 BOM CK 0253

In the Bombay High Court

Case No : Criminal Bail Application No. 1953 of 2014

Satyam Ramchandra Fulore

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 30-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439

Penal Code, 1860 (IPC) — Section 361 363 366 376

Protection of Children from Sexual Offences Act, 2012 — Section 12 4

Citation : (2015) ALLMR(Cri) 2785

Hon'ble Judges : Sadhana S. Jadhav, J

Bench : Single Bench

Advocate : Umar Kazi, Advocate for the Appellant; S.S. Pednekar, APP, Advocate for the Respondent;

Final Decision : Allowed

Judgement

Sadhana S. Jadhav, J.

1. Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers. This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 9/1/2014 in Crime No. 12 of 2014 registered at Kolsewadi Police Station, Kalyan for offence punishable under Section 363, 366, 376 of the Indian Penal Code read with Section 4 and 12 of the Protection of Children from Sexual Offences Act, 2012. The investigation is completed and charge-sheet is filed on 4th March, 2014.

2. The case of the prosecution is that on 6th January, 2014 Harindranath Bahadur Yadav filed a missing complaint at the police station contending therein that on 5/1/2014 at about 9.30 p.m. his minor daughter has left the house without informing anybody. It appears that the girl was found on 8/1/2014. Her statement was recorded by API of Kolsewadi Police Station. She has disclosed that on 5/1/2014 her mother had scolded her in regard to her studies. She was enraged and therefore, she had left the house on her own accord and had stayed

with her maternal aunt Munni Ramesh Yadav for two days. That she had returned to her house on 7/1/2014. She has specifically stated that she has no grievance against anybody for leaving the house. The said statement is signed by the daughter of first informant.

3. On 8/1/2014 Harindranath Yadav then lodged a report at the police station alleging therein that his daughter had returned home on 7/1/2014. She had initially disclosed that she was staying for 2 days with her maternal aunt. However, specifically she had disclosed that she was in the company of Satyam Ramchanra Fulore i.e. the present applicant. That he had disclosed to her that he loved her and was intending to marry her. She had accompanied him. They had been to Manpada. They stayed in a room for two days. According to the first informant, the present applicant had induced his daughter to elope with him. On 9/1/2014, statement of the daughter of the first informant was again recorded. He has disclosed that she had been in love with the present applicant. On 5/1/2014 he had called her on the cell phone and informed that they should elope and get married. He had taken her to Manpada. He had taken a room on rent. He had given her food and taken care of her. They had sexual intercourse. He had brought utensils and grocery in the said room. On 7/1/2014 he had not returned to the room till 8.30 p.m. and therefore, she had left the room and had gone to her own house.

4. Perused the papers of investigation. It is apparent that the girl was in love with the present applicant. The victim was sent for medical examination. She had not given any history of sexual assault. The history in the medical case paper is as follows:

"No alleged history of any sexual or physical assault."

5. The learned Counsel submits that the victim girl is 16 years old and that she has attained the age of understanding. The learned Counsel submits that in view of this, it cannot be said that the applicant has committed any offence punishable under Section 376 of the Indian Penal Code.

6. Reliance is placed in the case of *S. Varadarajan Vs. State of Madras*, wherein the Hon^{ble} Apex Court held as follows:

"It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of s. 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused

person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian."

7. In view of the above observations, the applicant has made out a prima facie case for grant of bail.

8. Hence the following order:

ORDER

"(i) The application is allowed. The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 15,000/- and one or two sureties in the like amount.

(ii) The applicant shall not tamper with the evidence.

(iii) The applicant shall not reside within the jurisdiction of Kolsewadi Police Station till conclusion of the trial."

The Application is disposed of on the above terms.