

**Order Below Exh.1 in Cri.B.Appln.No.333/2022**

CNR NO.MHNS010010802022

Devidas Manohar Gaikwad Vs. State.

**Heard:** Ld. Adv. Mr. A. G. Sonawane for the applicant.  
Ld. A.P.P. Ms. S.S. Sangle for the State.  
Perused the say filed by the complainant/victim.

1. This is an application under Section 439 of the Code of Criminal Procedure, 1973 in Crime No.48/2022 registered at Police Station, Panchavti, Nashik for the offence punishable under Sections 363 & 376 of the Indian Penal Code, 1860 & Section 4 of the Protection of Children from Sexual Offences Act, 2012. It is the case of prosecution in brief that the accused/applicant kidnapped the minor victim (aged 14 years and 7 months) and raped her.

2. Ld. Advocate for the applicant has submitted that initially the offence was registered only under section 363 of the I.P.C. against an unknown person. It is only after the victim was found that she narrated the incident and disclosed the name of the applicant. There was a love-affair between the applicant and the victim. She had voluntarily accompanied the applicant. Applicant is ready to abide by the terms and conditions imposed by the court. Therefore, no purpose will be served by keeping him behind bars. In order to buttress his contentions further, he has relied on an unreported order dated 9<sup>Th</sup> January, 2020 of the Hon'ble Bombay High Court in Cri. Bail Application No. 2632 of 2019 (**Anirudha Radeshyam Yadav V/s. The State of Maharashtra**). He has submitted that in this matter with similar facts, bail was granted to the accused.

3. Per contra, Ld. A.P.P. has vehemently opposed the application on the ground that there is *prima-facie* case against the applicant. Consent of a minor is not valid in the eyes of law. The victim is merely 14 years old. Investigation is in progress and charge-sheet is yet to be filed. If the applicant is released on bail, there are chances of his tampering with prosecution witnesses.

4. The complainant has also opposed the bail application.

5. Perusal of case-diary reveals *prima-facie* case against the applicant. Offence is serious in nature and is punishable up to imprisonment for life. Citation in the case of **Anirudha (Supra)** is not applicable to the facts of the present case, in as much as in the case at hand, investigation is in progress and charge-sheet is yet to be filed, whereas in the case of **Anirudha (Supra)**, the accused was behind bars since almost 2 years. Apprehension of the Ld. A.P.P. that if the applicant is released on bail, there are chances of his tampering with prosecution witnesses is also well-founded. In view of the foregoing discussion, I am inclined to reject the application.

**ORDER**

Application is hereby rejected.

Nashik  
16/03/2022

Mridula Bhatia  
District Judge-2 and  
Additional Sessions Judge, Nashik.