

Order Below Ex.1.

1] The applicant/accused has moved this court under Section 439 of The Code of Criminal Procedure for the offences punishable under Sections 363, 366, 323,506 of I.P.C., and section 11 and 12 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that the applicant is engaged in the job of taking the school going children to the school and from the school to their respective houses. It is a school van which is driven by the applicant/accused. It is alleged that on 10-11-2014 and also on 10-11-2014 to 13-11-2014 the applicant assaulted the victim girl aged about 6 years sexually by inserting the finger into her private part. The victim girl used to tell her mother since 10-11-2014 to 14-11-2014 that she was paining in her private part. On examination of private part, the mother of victim girl noticed some tenderness on the private part. The complaint thus, came to be lodged and the offence came to be registered.

2] It is contended that the applicant is falsely implicated in this case. Nothing incriminating has been recovered or discovered at the instance of present applicant. There is absolutely no nexus. Practically the

investigation is over. The applicant has no bad antecedents. He is permanent resident of the place mentioned in the application. Hence this is the application.

3] The application is strongly opposed byh the State by filing Say. It is submitted that the victim girl is aged about six years. There was continuous sexual assault on the victim girl by the applicant by inserting his finger into the pricate part of the victim girl.Since there was pain in her private part the mother noticed some tenderness over there. The offence is serious. The medical evidence is also supporting the case of prosecution, If the applicant is released on bail there is possi of tampering with the prosecution witnesses. The rejection is prayed for.

4] Heard Ld. counsel for both the sides. Heard the investigating officer Sr. P.I. G.D.Pingle, police station Warje Malwadi. Perused the FIR and other papers including medical certificate. On perusal of the FIR it seems that the similar type of incident occurred since 10-11-2014 to 13-11-2014. However, the complaint came to be lodged after three days I.e on 14-11-2014. It further seems that as per the allegations, the victim girl, since from beginning I.e from 10-11-2014 made a complaint to her

mother that there was pain to her private part. However, for three days the mother did not notice any injury or even tenderness on the private part of the girl. It is very natural act on the part of parents particularly the mother when the victim girl aged about 6 years makes a complaint about the pains in private part, it was very natural for the parents to examine physically. However, it is not done so. It is true that the medical certificate shows some tenderness on the private part, however, there is no injury as such. It is also material to note that the applicant is engaged in the job of taking the small children from their respective houses to the school and vice-a-versa since last 3-4 years. However, no complaint has been made either by the children or their respective parents. Admittedly, there are CCTV cameras installed in the premises of the school. In this regard the Investigating officer has submitted that principal of the school has given the report that since some days before the incident the CCTV cameras were not functioning. However, again I would like to mention that the Investigating officer has not verified this fact whether really CCTV cameras installed into school were not working or functioning. It is also to be noted that for three days though there was complaint by

the victim girl to the mother there was no verification as a natural conduct of the parents. Admittedly, after three days the complaint came to be lodged. Moreover, considering the nature of the offence I think that the physical custody of the applicant is not required for the purpose of investigation. No doubt that the offence is serious. But only the detention of the accused in the jail is not material when everything is available for the investigating officer for carrying out the investigation. This is not the case where there are allegations of penetrative vaginal intercourse for which the other factors are material. So, considering the allegations made and the permanent resident of applicant clubbed with the no bad antecedent and no complaint of any person including the parents since last 3-4 years, I am satisfied to enlarge the applicant on bail and following order is passed.

ORDER

- 1] The application is allowed.
- 2] The applicant Sandeep Shivaji Kumbhar be released on his executing solvent surety of Rs. 20,000/- with one surety in the like amount.
- 3] The applicant shall supply documentary evidence of his permanent address and shall file affidavit

in support thereof.

4] The applicant shall not tamper with the prosecution witnesses in any manner.

5] The applicant shall attend the concerned police thrice in a week i.e. on Saturday, Monday and Thursday in between 6.00 to 8.00 p.m. until the charge-sheet is submitted.

6] The applicant shall not meet the victim girl, parents or other relatives until the trial is over.

Pune.

(Mangala J. Dhote)

Dated/- 19-12-2014.

Additional Sessions Judge, Pune.

