

ORDER BELOW EXH.1

1] This is an application for bail filed by the applicant u/s. 439 of Code of Criminal Procedure in connection with CR No. 463/2023 registered with Khadki police station for the offences punishable under Sections 376(2), 354-D, 506 of the Indian Penal Code and under Sections of the Protection of Children from Sexual Offences Act. [Hereinafter the Indian Penal Code referred to as “IPC” and the Protection of Children from Sexual Offences Act referred to as “POCSO Act” for the sake of brevity.]

2] The prosecution has filed say and opposed this bail application. The informant has filed say and resisted this application.

3] Heard Ld. Advocate for the applicant and Spl.P.P. for the State. Perused application, say filed by the prosecution and police papers. Perused photographs and chats of the applicant and the victim.

4] The mother of the victim has lodged a report on 14.12.2023. The victim is 17 years old and taking education in the college. The applicant followed the victim repeatedly since one and half year and therefore, the informant gave understanding to the applicant in the presence of his parents, but thereafter also he was repeatedly stalking the victim. On 13.12.2023, after the school of the victim, the applicant again followed her till Tamboli General Stores, Khadki, Pune, the father of the victim asked the applicant about the same. He replied that, “मी घरी येणार तिस घेवून जाणार कोणास काय सांगितले तर

तुम्हास जिवे सोडणार नाही”. Thus, he threatened the father of the victim. The father of the victim came home and they made discussion and the informant has lodged the report against the applicant.

5] The supplementary statement of the victim was recorded and she narrated that on 22.12.2023, during the investigation of the crime, she was sent to CWC, Yerawada, Pune and in the presence of counselor, she told to the police that in the month of December-2022, there was gathering in the college and when she was going to the college, the applicant restrained her and expressed his love on her and he told her to sit on his motorcycle. The victim sat on the motorcycle of the applicant and he took her in hotel situated within Kondhawa area. The applicant under the pretext of marriage by expressing his love upon her, established physical relations with the victim without her consent. To avoid defamation, the victim did not tell the incident to anyone. Thereafter also repeatedly under various reasons, the applicant took the victim to Kondhawa and established non consensual sexual intercourse with the victim.

6] The victim was examined by the doctor on 25.12.2023. She disclosed the history to the doctor and named the present applicant as her friend. She narrated to the doctor that before one and half year, they had 5 to 6 times physical relations. The photographs and chats are on record. Prima facie it appears from the material before the Court that the victim and the applicant are having love affair and they had consensual physical relations.

7] Thus, it is case of love affair of a boy and a girl. The victim has attained age of understanding and she has surrendered to the physical desires of the applicant out of her love and affection. It is mitigating circumstance considering age group of the applicant and the victim. The victim is of understanding age and having knowledge of consequences of her act. The applicant is only 20 years old. The applicant is in his early 20's deserves to get employment, to plan and stabilize and secure his future.

8] Thus, in the facts and circumstances, considering love relationship of the applicant and the victim and as there are no criminal antecedents against the applicant and no allegations of any violent act against the applicant, it is just and proper to release the applicant on bail. No doubt, minor's consent is immaterial, but conduct of the applicant and the victim is necessary to consider at this stage. Therefore, application is to be allowed by imposing stringent conditions upon the applicant. With this, I proceed to pass the following order:

ORDER

- 1] The application is allowed.
- 2] The applicant **Fardin Nasir Khan** shall be released on bail upon furnishing P.R. bond in the sum of Rs.50,000/- with surety in the like amount.
- 3] The applicant shall attend concerned police station on every Monday and Friday between 10.00 am to 11.00 am till filing of the charge-sheet.
- 4] The applicant shall not tamper with the prosecution evidence in any manner. He shall not pressurize the victim, informant and family members and witnesses and shall not indulge in any offence.

- 5] The applicant shall not contact with the victim and family members, in any manner.
- 6] The applicant shall not confront to the victim and not to enter in the area where the victim is residing.
- 7] The applicant shall submit his address proof and phone details as well as phone details of two close relatives to Investigating Officer.
- 8] The applicant shall not leave India without prior permission of the Investigating Officer.
- 9] Violation of any of the conditions imposed, shall amount the cancellation of bail forthwith.
- 10] Bail application stands disposed of accordingly.

Pune.

Date – 06.02.2024.

(S.P. Ponkshe)

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	- Sau.S.V.Thakar (Steno G-1)
Court Name	- Smt. S. P. Ponkshe, Addl. Sessions Judge, Pune.
Date of Order	- 06.02.2024
Order dictated on	- 06.02.2024
Order transcribed on	- 06.02.2024
Order signed by P.O.	- 06.02.2024
Uploaded on	- 07.02.2024