

ORDER BELOW EXH.1

1] Perused the 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. 821/2018 registered at hadapsar Police Station for the offence punishable under section 376(2)(J) of the Indian Penal Code and under section 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that victim aged about 17 years lodged report stating that one Rohit Pimple was in her class and they were acquainted with each other. There was love affair between them and they were meeting with each other. In January 2018, after school hours, she waited in school for meeting, Rohit came there, hugged her, she rescued herself and ran away, but Rohit followed her and hold her, forcibly committed sexual intercourse with her, due to which she was frightened and did not disclose anything to anyone. Thereafter, Rohit came to her house under pretext of taking book, victim was alone and by taking disadvantage of this fact, he did forcible sexual intercourse with her. Later on due to stomach pain her mother took her to hospital and it was revealed that she was pregnant. Initially victim filed report against Rohit Pimple.

3] However, on 19/12/2018, supplementary statement of victim was recorded in which she disclosed that she resides along with her parents, elder and younger brother. In February or March 2017, she and her elder brother i.e. applicant were in house. Her elder brother i.e. applicant aged about 20 years tried to create intimacy with her, forcibly removed her clothes and committed forcible sexual intercourse

with her. She was frightened and did not disclose incident to any one. Thereafter, from time to time when nobody was in house, applicant committed forcible sexual intercourse with her. In July 2018, she went in hospital for regular check up and it was revealed that she was six months pregnant. In September 2018, she delivered boy child. Only due to fear, she did not disclose name of applicant and on 12/11/2018, before Court she took name of one Ashok Choudhary.

4] According to applicant he is falsely implicated in this matter. He is real elder brother of victim. So he never committed act of forcible sexual intercourse with her. Moreover, he is suffering from various ailments i.e. high diabetes, one machine is fixed to his waist to control insulin. His kidneys are swollen and one pipe is attached for urination. Applicant has undergone cataract surgery on 30/11/2018. Therefore, his health is not good and he is suffering from various illness. He is admitted in Sassoon Hospital. Initially FIR was filed against one Rohit Pimple. Later on his name is involved in this matter. Due to his illnesses and physical condition, he required supervision from expert doctors. His urgent kidney surgeries are suggested. He is only 20 years old and studying in Arihant College, Pune. He is permanently residing at Hadapsar, Pune. He has no criminal antecedents. He is ready to abide the conditions. Hence, he prayed to release him on bail.

5] APP and I.O. objected this application on the ground that considering relationship, applicant will pressurize victim and witnesses. There is possibility of tampering prosecution evidence and witnesses. Investigation is in progress. Statement of victim under section 164 of Cr.P.C is yet to be recorded. So, they prayed to reject the application.

6] Allegations against the applicant are serious. Though in previous statement, victim mentioned name of Rohit Pimple and narrated allegations of forcible sexual intercourse by him, in her supplementary statement, she dared to take name of her real brother and specifically stated that applicant i.e. her real brother committed forcible sexual intercourse with her from time to time as a result of which she became pregnant and delivered child. Their DNA samples taken and reports are yet awaited. According to her, due to relationship and fear, initially she did not disclose name of her real brother.

7] According to applicant, he is suffering from various ailments including diabetes, urination problem, kidney problem, etc. for which he is at present taking treatment in Sassoon Hospital. Reports are called from Sassoon Hospital which shows similar fact. Moreover, applicant filed on record medical papers to show his illnesses. Advocate of applicant emphasized on first statement of victim and history given by victim to medical officer regarding friendship and sexual intercourse with Rohit Pimple. However, it cannot be ignored that subsequently victim dared to take name of applicant though she was under fear. Police papers prima facie shows that, after investigating school record there is no boy namely Rohit Pimple. Moreover, as discussed above, investigation in this matter is going on. Considering relationship definitely applicant is in dominating/influential position over victim. Therefore, there is possibility of giving threat and pressure to victim and witnesses who are mostly near relatives. Hence, there is possibility of tampering prosecution evidence. In view of above reasons and considering gravity of this offence, at this initial stage, as investigation is going on only on medical grounds, it is not proper to release

applicant on bail. Therefore, application deserves to be rejected with following order -

ORDER

1] The application is rejected.

Pune.

Date – 23/01/2019

(R.V.Adone)

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	- P. P. Bokil
Court Name	- Smt. R.V.Adone, Addl.Sessions Judge,Pune.
Date of Order	- 23-01-2019
Order signed by P.O.	- 23-01-2019
Order uploaded on	- 01-02-2019