

ORDER BELOW EXH.1

1] Perused application and say. Heard Advocate for applicant and APP for the State.

2] This is first bail application filed under section 438 of Cr.P.C. by applicant in respect of apprehension of his arrest in C.R. no. 194/18 registered at Koregaon Park Police Station for the offence punishable under section 376 of the Indian Penal Code and under section 3,4,8,12 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that victim aged about 18 years 5 months is lodged report against Sonu Tapkir stating that on 15/03/2018 and thereafter also, he committed forcible sexual intercourse with her from time to time in a car, as a result of which she became pregnant. During her supplementary statement dated 09/11/2018 she stated that in March 2018 she was preparing for examination in the house of her friend where other accused Vaibhav came, next day also other accused Vaibhav came to house of her friend Shraddha and her friend introduced victim with accused Vaibhav. Thereafter, at the instance of her friends, she, her friends went to house of accused Vaibhav. Accused Vaibhav alone was in house. Her friends went away. When she and accused Vaibhav were in house, his two friends including present applicant came along with liquor bottles and accused Vaibhav insisted her to drink though she refused. Accused Vaibhav then committed forcible sexual intercourse with her. Thereafter, present applicant and other accused also committed forcible sexual intercourse with her one by one though she shouted.

3] According to applicant he is falsely implicated in this case. In First Information Report there are no allegations against applicant.

There is total variance in First Information Report and supplementary statement of victim. There is delay in lodging report. His family members are depending on him. He is not concerned with offence. He is reputed person and resident of Kharadi, Pune and has no criminal antecedents. Due to levelling of offences punishable under section 376 of the Indian Penal Code and under section 4, 8 of POCSO Act there is apprehension in his mind about the arrest. So, he prayed to grant protection under section 438 of Code of Criminal Procedure.

4] A.P.P. and I.O. objected application on the ground that investigation is in progress. Applicant and other accused committed act of forcible sexual intercourse with victim one by one. Medical examination of victim and applicant is to be conducted. Statement of victim under Section 164 of Cr. P. C. is yet not recorded. Applicant was absconded and there is further possibility of absconding. Protection under section 438 of Cr.P.C. is not granted to co-accused. Material information is to be gathered from applicant. There is allegation of giving intoxicant to victim from Thumps-Up drink. Investigation in that regard is going on. DNA test of applicant is to be conducted. Applicant and others are threatening victim and her family members. So, as investigation is going on they prayed to reject the application.

5] Allegations against the applicant are serious. From First Information Report it revealed that there are allegations against one Sonu Tapkir. But in supplementary statement victim narrated in detail about acts of present applicant and others. It is alleged that other accused gave drink to victim mixed with intoxicant and then forcibly committed sexual intercourse with her. Two friends of applicant i.e. present applicant and other accused also committed similar act with

victim. Considering gravity of offence and allegations, material information is to be gathered from applicant. Medical examinations are to be conducted.

6] In this context Advocate of applicant relied on authority cited in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra reported in 2011 (1) SCC 694*, in which it is observed that the Courts while considering the anticipatory bail application should try to maintain fine balance between the societal interest vis-a-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the Competent Court.

7] Ratio laid down in above cited ruling is noted. So far as allegations are concerned alongwith medical examination, necessary information is to be gathered from applicant. Therefore, custodial interrogation with applicant is required. In case in hand from supplementary statement of victim prima-facie involvement of applicant can be gathered. Previously he was absconded. He and his persons gave threats to victim and her family members. There is further possibility of giving threat and pressure by applicant to victim and witnesses. Hence, considering gravity of offence and above reasons it is not proper to grant protection to applicant under section 438 of Code of Criminal procedure. Due to above reasons application deserves to be rejected with following order -

ORDER

The application is rejected.

Pune.
Date – 28.01.2019.

(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	-
Court Name	- Smt. R.V.Adone, Addl.Sessions Judge,Pune.
Date of Order	- 28.01.2019.
Order signed by P.O.	- 28.01.2019.
Order uploaded on	- 29.01.2019.