

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 439 of Cr.P.C. by applicant in respect of his arrest in C.R. No.66/2019 registered at Kothrud Police Station for the offence punishable under section 376 of the Indian Penal Code and under sections 3, 4, 18 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that mother of victim aged about 16 years 9 months lodged report stating that on 23.2.2019 victim went to attend sendoff programme of her class. She informed that she will return till 6.45 pm, but she did not return till 8.30 pm. First informant made phone call on mobile of friend of victim and inquired about victim. Her friend told that one boy called victim. Thereafter, first informant and her another daughter went near Shrushti Building, Kothrud and searched victim, but she did not find. When first informant was returning to house at 9.00 pm, she saw victim running in frightened condition towards the house. She started crying. Her clothes were scattered and her Kurta torn near sleeves. There were blood stains at backside of Kurta. Upon inquiry with victim, she told that she was acquainted with boy Nikhil Gaikwad i.e. applicant, who called her by telling that he want to talk with her, he then snatched her class bag and made her to sit on his motorcycle. He took her at terrace of Rutugandha building. Victim was denying to go with him. After going at terrace, he forcibly committed sexual intercourse with her by removing her clothes. She started paining at vagina and there was bleeding. Applicant threatened to kill her family members and her, if incident was disclosed

to any. Applicant then dropped her at Ashish Garden chowk on his vehicle.

3] According to applicant he is falsely implicated in this matter. It is a case of love affair. There is delay in lodging report. Family members of victim opposed the relationship. Victim is 17 years old therefore, she knows the consequences of the act. There was no force from the applicant. Applicant is 22 years old and doing labour work. His family members are dependent on him. He is permanently residing at Kothrud, Pune. He has no criminal antecedents. He is ready to abide the conditions. Hence, he prayed to release him on bail.

4] APP and I.O. objected this application on the ground that investigation is in progress. Applicant will pressurize victim and witnesses. There is possibility of tampering prosecution evidence. So, they prayed to reject the application.

5] Allegations against the applicant are serious. Applicant is sufficiently interrogated. From statement of victim and first informant role attributed to applicant can be gathered. Victim made allegations of forcible sexual intercourse by applicant with her. In medical papers also she gave similar history. In Medical report there are injuries on her person. Due to fact that medical report supports the contention of victim, APP submitted that it is a case of forcible sexual intercourse, therefore it is not proper to release the applicant on bail.

6] Per contra, Advocate of applicant submitted that it is a case of

love affair and her family members opposed the relationship. In that regard, he relied on one chit alleged to be written by victim to applicant. Advocate of applicant filed photographs of the building i.e. place of incident in order to show that no such type of incident in that building is possible and it is not believable that victim did not raise hue and cry at the time of alleged incident. Moreover, at present after completion of investigation charge-sheet is filed. Victim is about 17 years old and applicant is 22 years old. Victim has attained age of sufficient understanding. Moreover, report of incident dt. 23.02.2019 is filed on 25.2.2019. Due to completion of investigation and filing of charge-sheet, personal custody of applicant is not required. Advocate of accused also called Health Report of accused from Sassoon hospital in order to show that he complained of uncomplicated hernia. Report received that applicant was sent to Sassoon for expert opinion and it is a case of simple uncomplicated hernia. Due to filing of charge-sheet, it is not proper to further detain applicant for unknown period as trial will take long time. He is doing labour work and has no criminal antecedents. His family members are depending on him. In view of gravity of offence, strict conditions are to be imposed to secure his presence. Therefore, in view of all above discussion, following order is passed.

ORDER

- 1] The application is allowed.
- 2] The applicant Nikhil Bhaskar Gaikwad be released on executing P.R. bond of Rs.40,000/- with one or two solvent sureties in the like amount. One local surety be furnished.
- 3] The applicant shall not tamper the prosecution evidence in any manner.

- 4] The applicant shall attend Kothrud Police Station on every Monday between 11.00 a.m. to 2.00 p.m. till the charge-sheet is filed.
- 5] The applicant shall not meet, harass, threat and pressurize the victim.
- 6] The applicant shall co-operate investigating machinery as and when required.
- 7] Prior to furnishing surety, the applicant shall submit his address proof, mobile number and inform about the change in address and mobile number.

Sd/-

Pune.
Date – 16.8.2019.

(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	- Sau. Arya Nikam (Stenographer G-1)
Court Name	- Smt. R.V.Adone, Addl.Sessions Judge,Pune.
Date of Order	- 16.8.2019.
Order signed by P.O.	- 16.8.2019.
Order uploaded on	- 17.8.2019.