

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 C.R. No.315/2023 registered with Yerwada Police Station for the offences punishable under Sections 363, 376, 376(d)(a) r/w. 34 of the Indian Penal Code and under Sections 4 and 6 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 vide Exh.4 and opposed this bail application. The informant has filed her say and strongly opposed granting bail to the applicant.

3] Heard Ld. Advocate for the applicant and Spl.P.P. for the State. Perused application, say filed by the prosecution and charge-sheet. The applicant has tendered documents i.e. the certificates obtained by the applicant.

4] It is argued by Ld. Advocate for the applicant that there is no name of applicant mention in the medical examination report and even in the supplementary statement of the victim, there is no name of the present applicant. After though the case is prepared and named the present applicant on 19/05/2023. The applicant is just 18 year's old and there is possibility that he may come in contact with the hurdle criminals. The character certificates of the applicant are on record. Hence, prayed for allowing the application.

5] Ld. Spl.P.P. has argued that the victim is 12 year's old. The victim in her supplementary statement made clarification and both accused committed rape on the victim. Accused No.1 Abhishek Chavan is the relative of the bus owner. The incident was occurred in the bus. There is prima-facie sufficient material in respect of commission of gang rape. Hence, prayed for rejection of the application.

6] The mother of the victim has lodged a report under section 363 of the IPC, on 12/05/2023. The victim is 12 years old. On 11/05/2023 at around 7.30 p.m. the victim was in the gallery of the house and thereafter, she did not find. After lodging a report, on 12/05/2023, on same day, the victim returned to home at late night. Hence, the informant had taken the victim to the police station on the next day. The police sent the victim to the Sassoon Hospital for her medical examination. The victim informed the incident to her mother that she went along with her friend "Chaitanya". He had taken the victim in the bus, standing on the road proceeding towards Vimannagar at 09.30 p.m. and forcibly established sexual intercourse with her. Accordingly, supplementary statement of the mother of the victim was recorded by the police on 15/05/2023.

7] The doctor examined the victim on 13/05/2023. The victim narrated the history to the doctor and disclosed name of "Chaitanya" as her boyfriend. She narrated the history of vaginal intercourse committed by "Chaitanya" in the Bus. The statement of the mother of

the victim recorded on 15/05/2023 discloses that the victim disclosed her that “Chaitanya” committed non consensual intercourse with her in the Bus. On 15/05/2023 the statement of victim was recorded, she has reiterated the incident committed by the “Chaitanya”, in the presence of member of Mahila Rakshak Samiti and her mother and lady police officer. On 19/05/2023 supplementary statement of the victim was recorded and she disclosed that she stated lie in respect of “Chaitanya” and disclosed further that on 11/05/2023 two boys forcibly established sexual intercourse with her. The statement discloses that on 09/05/2023 at around 10.30. p.m. She was out of the house and wondering and went near post office, where she met known boy by name Abhishek @ Sachin and his friend Prathmesh i.e. the present applicant. He told the victim that they would go in the bus and will have chatting. Therefore, the victim went along with them in the bus. Abhishek closed the door of the bus and present gagged her mouth and committed her rape. Thereafter, Abhishek gagged mouth of the victim and present applicant Prathamesh committed rape of the victim and then they went away. The victim got scared and she slept in the rickshaw within the vicinity and went to home in the morning. She falsely told her mother that she had been gone to roam in the morning. Then her mother told her that she will inform to the police and therefore the victim got scared and on 11/05/2023 she ran away at 7.30 p.m. and slept in auto-rickshaw and return back in the morning. She came to know that her mother lodged a report and she had taken name of her friend “Chaitanya” falsely.

8] It appears that the alleged incident allegedly occurred on

09/05/2023. The age of the victim was just 12 years 02 months 04 days at the time of alleged incident. No doubt initially she just named her friend “Chaitanya” but on 19/05/2023 she disclosed that present accused and his friend Abhishek have committed her rape on 09/05/2023 in the bus. Further statements recorded u/s. 164 of Cr.P.C. of the victim and her mother also prima-facie discloses that applicant and co-accused Abhishek have committed the alleged offence. Considering the nature of the allegations and age of the victim and as CA reports are awaiting, it is not just and proper, to release the applicant on bail. Therefore, application is to be rejected. With this, I proceed to pass following order :-

ORDER

The application is hereby rejected.

Pune.

Date – 13/10/2023.

(S. P. Ponkshe)

Addl. Sessions Judge, Pune.

CERTIFICATE

“ I affirm that the contents of the P.D.F. File Order are same word for word as per original Order.”

Name of Steno	-	Minal C. Yeole
		Stenographer Grade III
Court Name	-	Smt. S. P. Ponkshe,
		Spl.Judge under POCSO Act,
		Pune.
Date of Order	-	13/10/2023.
Order checked		
and signed by P.O.	-	16/10/2023.
Order uploaded on	-	17/10/2023.