



Special Case No. 937/2022
CNR MHPU-01-023431-2022

CR No. 252/2022
Vishrantwadi PS, Pune

State Vs. Nikhil Rajendra Gosavi

ORDER BELOW EXH.03

1] This is an application by the applicant **Nikhil Rajendra Gosavi** for being released on bail when they are arrested in CR No. 252/2022 of Vishrantwadi Police Station for the offence punishable under Section 363, 376(2)(n) of Indian Penal Code and U/s. 4, 5(l), 6 of Protection of Children from Sexual Offence 2012.

2] As per the prosecution the applicant enticed the victim girl on 28/09/2022 from near her residential premises at Kalas, Malwadi, Vishrantwadi, Pune. The applicant and the victim girl then went to Vani, Nashik District spent few days there in rented premises. The father of the victim on sudden disappearance of his daughter lodged missing report on 29/09/2022. Finally the police on 08/11/2022 traced out the location of the applicant along with the victim girl within the jurisdiction of Vani police station District Nashik. The charge-sheet alleges that the applicant who is about 24 years old had sexual intercourse with the victim girl who at the relevant time was 15 years and 8 months old, by saying her that he would perform marriage with her.

3] Heard both sides and perused the charge-sheet. Also perused the say of the prosecution at Exh. 07 as well as the say of victim at Exh. 09 and say of her father at Exh. 08. No doubt, the entire charge-sheet discloses that there was love affair between the

applicant and this minor victim and she consented for physically intimacy. In fact, it appears that on 09/11/2022 when she underwent medical examination she did not allege that accused had any physical intimacy with her, though the medical report disclosed evidence of vaginal penetration. Therefore it appears that the applicant in first remand was booked only under section 363 of IPC and the offence being bailable he was enlarged on bail. However, it appears that on 10/11/2022 the statement of victim girl was recorded and in that statement she disclosed that accused and she had physical relations two to three times in a rented premises at Vani and accused obtained such consent by saying her that he would marry with her. That is how the accused was then again taken into custody for investigation and now he is charge-sheeted.

4] No doubt, the present case in hand is of consent theory. However, the fact remains that the victim girl prima facie does not appear to have sufficient understanding about the consequences of her act because as per her police statement since her father scolded her when he came to know that applicant had come to her college to see her, she was annoyed and under that mental state she went to the house of applicant disclosing how her father scolded her and then the applicant suggested the victim girl to leave Pune. So merely because father's berated this minor victim left the house and accused exploited that situation. Then the applicant has criminal antecedents of bodily offence u/s. 307 of IPC vide Crime No. 179/2022 in which he could not be nabbed by police and police had to take his custody by transferring him in this crime from said Crime No. 179/2022. The say of victim girl though gives no objection at Exh. 09, the say of father at Exh. 08, strongly opposes the application. The say discloses that on 17/10/2022 applicant made a WhatsApp call threatening to

kill him his wife and son. The phone number from which he received said WhatsApp call is mentioned in the say and same WhatsApp phone number is attributed against the applicant at page 9 in charge-sheet. The applicant along with his family members resides in same locality where the victim girl resides. Taking into account, all these factors, I am of the considered opinion that it is not a fit case to enlarge the applicant on bail.

5] Before parting with the order, I may deal with the various rulings cited by the applicant and those are -

- i] Internet copy of judgment passed in the case of Sunil Mahadev Patil V/s. The State of Maharashtra – 2016 ALL MR (Cri) 1712 – Hon'ble Bombay High Court;
- ii] Internet copy of judgment passed in case of Satyam Ramchandra Fulore V/s. The State of Maharashtra – 2015 ALL MR (Cri) 2785 – Hon'ble Bombay High Court;
- iii] Internet copy of judgment passed in case of Prabhakar Tewari V/s. State of U.P. and Anr., in Criminal Appeal No. 153 of 2020 decided on 24 January 2020 – Hon'ble Supreme Court.

6] In neither of these rulings criminal antecedents of the bail seeker appear there nor angle of threat perspective as is here appears there, therefore, these rulings are confined to their own facts and not helpful to the applicant. Hence, the order :

ORDER

Application is rejected.

Pune.

Date :- 13th December 2022

(S.B. Hedao),
Additional Sessions Judge, Pune.

CERTIFICATE

I affirm that the contents of the PDF file Judgment are same word for word as per original Judgment.

Name of Steno	A. S. Shivapurkar Stenographer Grade I
Name of Court	Shri. S.B. Hedao, District Judge 5 and ASJ, Pune.
Date of Order	13.12.2022
Order signed by PO	15.12.2022
on	
Order uploaded on	15.12.2022