

MHCC050032842022



**IN THE COURT OF SESSIONS, AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI
BAIL APPLICATION EXHIBIT-6**

**IN
REMAND APPLICATION NO.252 OF 2022
(POCSO SPECIAL CASE NO.323 OF 2022)**

**Dhammapal Raju Gayakwad @
Nitesh @ Dammpal Raju Gaikwad
Age : 22 Years, Occ. : Service.
R/o.: Rajaram Galli, Bhagat Singh No.2,
Goregaon (W), Mumbai-400 104.Applicant/accused
V/s.**

**The State of Maharashtra
(Through Goregaon Police Station)Respondents**

Advocate Mr.T. R. Patel for Applicant/original accused.
Spl. APP Mrs. Geeta Malankar for State.

**CORAM: H.H.THE SPECIAL JUDGE,
Ms. S. J. ANSARI, (C.R.NO.11)
DATED : 4th August, 2022**

ORDER

The present application has been filed by the accused against whom Goregaon Police Station has filed the Special POCSO Case No.323/22 for the offences punishable u/s.376(2)(n), (h) of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and u/s.4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO Act").

2. The prosecution case as stated by the accused is that on 13/04/22 the victim a girl aged about 17 years, was admitted in the

maternity ward of K.E.M. Hospital at Parel, Mumbai. As the doctor found that the victim was a minor unmarried girl who was pregnant, she informed the police about the same. Thereafter, the police recorded the statement of the victim where it was stated that she had become acquainted with the accused about two years back as he was the brother of one of her friends. It was also stated that the victim used to go to meet the accused and he used to demand physical satisfaction from her. Though the informant initially resisted, the accused told her that they would marry subsequently, whereupon physical relations came to be established between them. The same continued over a period of time. About 8-9 months prior to the lodging of the report, it was found that the size of the victim's stomach had increased and she was also suffering from some pain. Her mother then took her to the hospital on 12/04/22 where she had a normal delivery. This resulted in the registration of an FIR against the accused for the offences as stated here-in-above.

3. As per the accused, even if the contentions of the prosecution are taken to be true, it will have to be noted that the chargesheet in the matter having been filed, no purpose would be served by further detaining the accused in custody. As regards the facts of the matter, the accused has stated that he and the victim were having a love affair since the last two years and were to marry each other. However, as he met with an accident while saving the victim's life, he suffered a fracture on one leg. Due to this, his marriage with the victim was opposed by her family, specially her aunt. In such circumstances, placing reliance upon the judgment of the Hon'ble Bombay High Court in the case of *Sunil Mahadev Patil V/s. The State of Maharashtra (Bail Application No.1036/2015) dated 03/08/2015*, it has been contended that the accused is also entitled to bail. Additionally, it has been stated that the

accused is a permanent resident of Mumbai, that he does not have any criminal antecedents as also he is the sole bread earner of his family. He is therefore, seeking the relief of bail.

4. The investigating officer filed his reply (Exh.7) in terms of which the facts of the incident have first been stated where upon the investigation as done till date has been related in detail. Thereafter, the application for bail has been strongly opposed by pointing out that the accused may become a danger to the life of the victim and her mother. It has also been pointed out that serious offences have been committed by the accused and he may repeat the same, if released. Further, expressing the apprehension that the accused may abscond, the investigating officer is seeking the rejection of the application seeking bail.

5. The victim has also filed her reply (Exh.8) in which she has also sought the rejection of the bail application.

6. The Learned APP has also vehemently opposed the application. It has been pointed out that the DNA report is still pending and even the statement of the victim u/s.164 of the Cr.P.C. is yet to be recorded. Hence, stating that there is a possibility of the accused contacting the victim and tampering with the prosecution evidence if released, she is also seeking the rejection of the application for bail.

7. Heard the Learned Advocate Mr. Patel for the accused and the Learned APP Mrs. Malankar for the State.

8. The chargesheet having been filed, it is quite clear that the investigation of the crime is complete. A perusal of the victim's

statement as available in the said chargesheet will prima facie show that the victim had become acquainted with a lady called Nandini Gaikwad and she used to visit her home. The accused is the elder brother of the said Nandini and over a period of time, the victim and the accused commenced a love affair. During the course of the same, the victim used to go to meet the accused when nobody else used to be present there. On one such occasion, as per the victim, the accused had started initiating a physical relationship which was refused by the victim as she pointed out that she was a minor. However, as per the victim, the accused told her that they would marry in the future and therefore, physical relations came to be established between them. Thereafter, as per the victim, the accused used to always call her to his home and had physical relations with her. This continued even after the accused changed his residence. Thereafter, the victim missed her periods and felt that the size of her stomach had increased. As she suspected that she had become pregnant, she informed the accused about the same at which he stated that there was no problem as they were going to marry. Even thereafter, the victim and the accused continued meeting and having physical relations. On 12/04/22 the victim started suffering stomach pain about which she told her mother who then took her to the hospital where she gave birth to a child.

9. Prima facie therefore, as argued by Shri. Patel, learned Advocate for the accused, it does appear that the physical relationship between the victim and the accused was consensual in nature. Even if that is so, it will have to be noted that the victim was indeed a minor at the relevant time, which fact was known to the accused even before the initiation of a physical relationship between the parties. Though it is indeed strange to see that the victim's mother did not find anything

untoward in the size of the victim's stomach increasing resulting in she giving birth to a pre-term child, it will have to be noted that the medical papers as available in the chargesheet will reflect the fact that the victim suffering from mild subnormality in her intellectual functioning. Prima facie therefore, it is quite apparent that the accused had taken advantage of this intellectual disability of the victim to commence and continue a physical relationship with her on the assurance of marriage. Consequently, the judgment of the Hon'ble Bombay High Court in **Sunil Patil's case cited (supra)** cannot help the accused in any way. This is because therein the victim and the accused had full control of their intellectual capabilities and had fallen in love with each other after which they had eloped and had a physical relationship. In the matter in hand, however, the situation is different as herein the accused appears to have been taken disadvantage of the mental disability of the victim.

10. Much arguments have then been advanced by the learned Advocate Mr. Patel on the point of the accused having suffered a fracture of his leg while saving the victim and of therefore, being entitled to bail. Innumerable documents regarding the medical treatment of the accused from 11/09/21 to 24/05/22 have been placed on the record. No doubt that the said documents show that the accused has sustained a wound on his leg for which he has undergone treatment. There is however, nothing on the record to show the circumstances under which the said injury had been sustained by the accused. Further, though it has been stated that the accused has always been ready and willing to marry the victim, which marriage has however, been opposed by her family members, there is other than the mere words of the accused himself, no material on record to support the said contention.

11. In such circumstances, I am of the opinion that the accused has not been able to make out any case for grant of bail as the facts before me prima facie show that he has taken disadvantage of a mentally challenged victim. I therefore, proceed to pass the following order :-

ORDER

Bail Application Exhibit-6 stands rejected.

Date : 04.08.2022

**(S. J. Ansari)
Special Judge under P.O.C.S.O. Act,
Sessions Court, Borivali Division,
Dindoshi, Goregaon, Mumbai**

Dictated on : 04.08.2022
Transcribed on : 08.08.2022
Checked and corrected on : 08.08.2022
Signed on : 08.08.2022
Sent to Dept. on :

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

UPLOAD DATE
AND TIME : 08/08/2022 at 5.20 p.m.

Mrs. Vidya Pendharkar
NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ S. J. ANSARI (Court Room No.11)
Date of Pronouncement of Judgment/Order	04/08/2022
Judgment/Order signed by P.O. on	08/08/2022
Judgment/Order uploaded on	08/08/2022