

Order below Exhibit 1 in Criminal Bail Application No. 81/2020
(Vilas Vs. State)
(Passed on : 27/04/2020)

Nature of the Application

1. This is an application filed by the accused-Vilas Bhagwan Narwade (for short 'accused') seeking bail under Section 439 of the Code of Criminal Procedure (for short 'Cr.P.C.') in Crime Register (for short 'C.R.') No. 102/2020 registered at Hatta police station under Sections 376(2) (n) and 506 read with 34 of the Indian Penal Code (for short 'I.P.C.') and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

Contents in the Application

2. The accused has contended that the victim's mother has filed first information report (for short 'F.I.R.') on 18/03/2020 alleging that she has another daughter by name Maya. The accused is Maya's husband. The victim went to her sister on 01/05/2019. Her sister Maya asked her to keep sexual relation with her husband-the accused as he like her. She declined to accept her request. However the accused forcibly committed rape on her on that day and since then continued to commit rape repeatedly and hence C.R.No. 102/2020 is registered against him.

3. He is in custody since 19/03/2020. He is innocent and has not committed any offence. He is falsely implicated in the offence due to family dispute. There is delay in lodging F.I.R. The victim's age is of understanding.

4. If released on bail, he is ready to co-operate with the police and will not tamper with the prosecution witnesses.

5. On these grounds the accused has prayed to grant the application.

Contents in the Reply of the Investigating Officer.

6. The investigating officer (for short 'I.O.') has filed reply through Additional Public Prosecutor (for short 'A.P.P.').

7. The I.O. has strongly objected the application. He has contended that the investigation is in progress. The accused has committed serious offence.

8. If released on bail, the accused will flee and will threaten the victim and witnesses.

9. On these grounds the I.O. has prayed to reject the application.

The Arguments

10. I have heard Shri. S. M. Farooq, advocate for the accused and Shri. N. H. Nayak, A.P.P. for the prosecution, in extenso.

11. They argued in consonance with the contentions in the application, say and referring the documents produced on record. In order to avoid repetition it is not necessary to note those arguments.

Points and Findings

12. Upon hearing the following points arise for my consideration and I record my findings thereon as under for the reasons to follow :-

	Points	Findings
1)	Whether a case has been made out by the accused for granting the relief of bail, as prayed for ?	No.

2)	What order ?	Application rejected.
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Reasons as to Point Nos. 1 and 2

13. The F.I.R. clarifies that the accused kept sexual relation with the victim repeatedly and his wife supported him.

14. The F.I.R. and investigation done so far clarifies that the accused firstly requested his wife who is sister of the victim to make her ready for keeping sexual relation with him as he was liking her. When the victim declined to accept his proposal, he committed rape on her on 02/05/2019 and continued to commit rape with the active support of his wife. The allegations made against the accused can not be disbelieved considering the fact that the victim has specifically named the accused, prima-facie. Under such circumstances it cannot be said that the accused is falsely implicated in the offence with any ulterior motive. Therefore, in my considered view it can be concluded safely that the accused committed rape on the victim repeatedly, prima-facie.

15. The accused when is putting forth the ground that he is behind bar since 19/03/2020 has conveniently ignored the trauma which the victim and her family members are made to suffer by his heinous act.

16. I am unable to persuade myself with the argument advanced by Shri. S.M. Farooq advocate for the accused that he is entitled for bail because (i) the F.I.R. is lodged by the victim with some ulterior motive (ii) victim's age is of understanding (iii) he is not involved in the offence, as alleged and (iv) there is delay in lodging F.I.R. The reasons are :-

➤ That the investigation has proved that the accused had

kept forcible sexual relation with the victim repeatedly with the support of his wife.

- That the allegations made by the accused against the victim proves that he is not remorseful.
- That positive involvement of the accused is brought on record that he committed the offence with which he is charged, prima-facie.
- That the offence alleged to have been committed by the accused is very serious.
- That the possibility of the accused tampering with the witnesses cannot be ruled out considering nature of offence.
- That admittedly the victim is not major, therefor it can not be said that is substance in the allegations made by the accused.
- That the lodging of F.I.R. belatedly is no ground at this stage to hold that whatever is alleged by the accused is true. The effect of delay can very well be taken care of at the time of trial if the investigation ends in filing of charge-sheet. Moreover, the commission of offence was/is continued till lodging of F.I.R., so considering nature of offence, it can not be said that there is delay in lodging F.I.R.
- That considering my discussion, supra.

17. It is well settled that the provision of bail under Section 439 of the Cr.P.C. is meant for saving the innocent person from unnecessary detention. The said provision cannot be used for a person,

who prima-facie, is involved in criminal activities.

18. To sum up, the offence which is committed by the accused is of serious nature. If the application is granted it will definitely hamper the investigation. In order to ensure free and fair investigation it is necessary that the accused should remain in custody because there is every chance of tampering with the material witnesses. The involvement of the accused in the crime registered against him is clear as there is strong evidence, to connect him with the offence with which he is charged. The apprehension in the mind of prosecution that the accused will tamper the prosecution evidence seems to me as genuine. In view of serious nature of the offence committed by the accused, the application is liable to be rejected. If that be so, the contention of the accused that he is innocent and is falsely implicated in the crime, can not be accepted, prima-facie.

19. In view of the above-mentioned facts and circumstances of the case, I am declined to grant bail to the accused.

20. It is made clear that the observations made in this order are made for the limited purpose of this application only and shall not have any effect on the merits of the case under investigation and all parties are at liberty to agitate their respective cases at the time of inquiry or trial in the case under investigation on merit without being prejudiced even in the least by any of the observations made in this order.

21. Accordingly, I answer point No. 1 in the negative and point No. 2 as application rejected.

22. In the result, following order :

ORDER

1.	The application is rejected.
2.	The concerned police station be informed, accordingly.
3.	The police papers be returned.

(Pronounced in Open Court).

Date : 27/04/2020.

(M.B.Lambe),
Special Judge(POCSO),
Basmathnagar.