

ORDER BELOW EXH.1

(Nitin Bangal V/s. State of Maharashtra)

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. 368/2019 registered at Chandannagar Police Station for the offences punishable under sections 363, 376 (2) (j) of the Indian Penal Code and under sections 4, 8 & 12 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that, victim aged about 16 years lodged report stating that, on 24/09/2019 she was going to school along with her friend. bu due to headache she was returning house. At that time, applicant came with his black coloured rikshaw and asked victim to sit in rikshaw, he pulled her in rikshaw, tied handkerchief on her eyes, hand and mouth, in that rikshaw on back seat, he committed forcible sexual intercourse with victim for two times. She could not shout due to tie of her mouth by handkerchief.

3] According to applicant, he is falsely implicated in this matter. Parents of victim learnt about love affair between him and victim and pressurize her to file false report. Victim is more than 17 years old and knows the consequences of the act. Such type of act is not possible as narrated by the victim. Applicant is 21 years old and doing job. He is temporary resident of Wagholi, Pune and permanent resident of Manjar Sambha Dist. Beed. His family members are depending on him. 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 grounds 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. from the victim role attributed to applicant can be gathered. victim made allegations of forcible sexual intercourse by applicant with her in rikshaw by tying her hand, eyes and mouth with the help of handkerchief. Act was repeated and applicant ran away from the rikshaw after the incident. Medical report of victim shows similar history and medical officer opined about possibility of attempt of vaginal penetration. Advocate of applicant submitted that, there was love affair between victim and applicant and in that regard, he filed on record call details showing the mobile number as mentioned in FIR of victim. He tried to show friendship between victim and applicant. Advocate of applicant relied on authorities cited in ***Sunil Mahadev Patil Vs. State of Maharashtra reported in 2016 All MR (Cri.) 1712***, in which it is observed that if statement of prosecutrix and witnesses shows that they were in love relationship with each other they eloped and went to temple and performed marriage, they started residing together in the house of relative then there are mitigating circumstances. Moreover, it is observed that factor i.e. age of prosecutrix, whether act is violent, whether there are antecedents or not, whether offender is capable of repeating the act or not, whether there is likelihood of threats or intimidation if at all the boy is released, whether chance of tampering with material witnesses and age of the applicant and his employment and plan, stabilize and secure his future are to be taken into consideration while deciding bail application, when boy and minor girl are in love with each other. ***Satyam Ramchandra Fulore Vs. State of***

Maharashtra reported in 2015 All M.R. (Cri.) 2785, in which it is observed that if victim was in love with applicant and no history of sexual or physical assault revealed from the medical examination, victim being 16 years old had attained age of understanding, prima-facie case is made out for grant of bail.

6] Ratio laid down in above cited rulings noted. However, in statement before police victim never stated about friendship and love affair between her and applicant. Moreover, investigation is still in progress. there is nothing on record to show that, statement of victim u/s. 164 of Cr.P C is recorded. So there is possibility of tampering prosecution evidence by giving threat and pressure by applicant to victim and witnesses. Applicant is permanent resident of Dist. Beed and there is possibility of his absconding. Therefore, at this initial stage, in view of gravity of offence, age of victim, it is not proper to release applicant on bail. Hence, in view of above reasons, the application deserves to be rejected. Hence, the following order -

ORDER

The application is rejected.

Pune.

Date – 19.10.2019.

(R.V.Adone)

Addl.Sessions Judge, Pune.

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

Name of Steno	- G. S. Chougule
Court Name	- Smt. R.V.Adone, Addl.Sessions Judge,Pune.
Date of Order	- 19.10.2019
Order signed by P.O.	- 19.10.2019
Order uploaded on	- 22.10.2019

