

**IN THE COURT OF SESSIONS JUDGE AND JUDGE OF
SPECIAL COURT, DAMAN.**

Spl.Case (POCSO) No.24/2022 C.N.R.No.UTDD010009912022

Lavakush V/s. State.
Order Below Exh.4
(Passed on 15/03/2023)

1] This is an application under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') for regular bail in connection with Crime No.24/2022 registered at Coastal Police Station, Moti Daman under Section 302, 376, 376-A, 376-AB of the Indian Penal Code (in short 'IPC') and Section 6 of Prevention of Children from Sexual Offences Act (in short 'POCSO Act')

2] Perused the application, say and the charge-sheet. Heard Ld. Adv. Shri. Kunal Desai for the accused and Ld. PP Shri. Hariom Upadhyay for the State.

3] The Ld. advocate for the applicant-accused vehemently submitted that the incident occurred on 11/08/2022 and FIR came to be registered against unknown person. He submitted that victim is 4 years old and accused is residing on

same floor. He submitted that the accused was arrested on apprehension after about 8 days of the incident only on the ground that he has left his room. However, the prosecution has not considered the reason to leave the room which has been come on record from the statement of wife of accused. He submitted that the only material evidence against the accused is the report of DNA. He further brought attention of this Court to the statement of mother of victim and the statement of other witnesses and submitted that there was no any scope to enter in the house of victim. He also brought attention to the panchanama of the spot of occurrence and submitted that though the frock and other articles were shown lying on the spot the same has not been disclosed by the informant in her report. He submitted that there is no any conclusive proof and on the basis of autopsy report also a conclusion cannot be drawn that it is applicant-accused only who has committed the said offence.

4] Per contra, Ld. PP vehemently submitted that the applicant was staying on the same floor was having every opportunity to enter into the house of victim, as at the relevant

time, the informant mother of victim was occasionally going downwards to see whether her husband and brother-in-law returned from party. He further submitted without intimating caretaker or any neighbourer applicant-accused suddenly left his house with all family keeping lock to the said house. He submitted as there is no any eye witness, and on the basis of circumstantial evidence i.e. DNA report a conclusion can be prima facie drawn that accused committed rape upon victim and he also murdered her.

5] At the very outset, I would like to state that at the time of considering application for bail, it is not required to enter into the merit in the manner to conduct mini trial. What has to be seen is whether prima facie role is attributed to the accused and if yes, has to consider other parameter required for consideration of application for bail.

6] Admittedly, in the case at hand, there is no eye witness. Thus, the total case based upon circumstantial evidence. No doubt, only on the basis of circumstance i.e. abscondence of

accused after the incident, which can be considered under Section 8 of Evidence Act, bail application cannot be rejected. However, on consideration of the investigation material it could be gathered that after accused came to be arrested on 06/09/2022, his blood sample was collected on 08/09/2022. The said sample and the biological sample of the victim were sent for chemical analyzer and more particularly to ascertain the DNA. On consideration of DNA report is prima facie finger towards the accused for commission of offence of rape. The deceased victim was 4 years old, considering the postmortem report it against substantiate the case putforth by the prosecution. The strong contention is that there was no occasion for accused to enter into house of victim cannot be considered at this stage on the probability as it is a candid case of prosecution that the informant has allowed the victim to sleep after removing her frock from her body and the bed-sheet was covered on her, which has been removed in the morning as victim was not awake. Therefore, considering all these facts and the nature of offence, in my

considered opinion, this is not a fit case where discretion can be exercised to grant bail. Accordingly, I pass following order.

ORDER

The application Exh.4 is hereby rejected.

Place : Daman
Date: 15/03/2023

[S. M. Bhosale]
Sessions Judge &
Judge of Special Court, Daman

CERTIFICATE

I affirm that the contents of this P.D.F. file judgment/order are same, word to word, as per the original Judgment/order.

Name of the Stenographer typed by	:	Dhiraj Gajbhiye, Stenographer (H.G.)
Court	:	Sessions Court, Daman.
Date	:	15.03.2023
Judgment/Order signed by the Presiding Officer on	:	15.03.2023
Judgment/Order uploaded on	:	15.03.2023

Spl. C. (POCSO) 24.2022
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