

MHCC050037482020



**IN THE COURT OF SPECIAL JUDGE UNDER THE PROTECTION OF
CHILDREN FROM SEXUAL OFFENCES ACT, 2012 AT BORIVALI
DIVISION, DINDOSHI, MUMBAI.**

BAIL APPLICATION(Exh.5)
IN
REMAND APPLICATION NO.195 OF 2020
IN
SPECIAL CASE NO. 352 OF OF 2020
(MHCC05-003748-2020)

Mr.Nagesh Shivtambi Condour

age 56 years, Occ: Service

Residing at: Madraswadi,

Next to JVLR, Uttar Vahini,

Kacche Jhopde, Jogeshwari(East),

Mumbai 400 102.

..Applicant/accused

Vs

The State of Maharashtra

(Aarey Police Station)

..Respondents

Advocate Mr.Rajpopat for the applicant/accused.

Spl. APP Ms. Malankar for the State.

CORAM: H.H.THE SPECIAL JUDGE,
SMT. H.C. SHENDE, (C.R.NO.12)
DATE : 29th October, 2020.

ORDER

The applicant/accused has moved this application U/sec.439 of Cr.P.C. for grant of bail in C.R. No.521/2020 for the offences U/sec.

376, 377, 354, 506 of Indian Penal Code and U/sec.4, 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012, registered with Aarey Police Station.

2 By way of application and oral submissions, it has been argued on behalf of the applicant by Ld.Advocate for applicant that, applicant was arrested in the matter on 25.8.2020 and at present he is remanded to judicial custody. Applicant is falsely implicated in this matter by the respondent i.e. original complainant. Name of the applicant is incorrectly mentioned in the FIR. He has neither intimidated nor threatened the complaint or his family. He has not done any overt act with the prosecutrix. He is an innocent person. He do not have any connection with the girl. No such incident of outraging modesty had ever been taken place. As there was quarrel on some issue in between applicant and relatives of the complainant, they have been implicated him falsely in the matter. He has also co-operated to the investigation machinery. Charge-sheet is also came on record. So nothing remained to be interrogated or recovered from him. His further custody is not at all required. He is law abiding citizen aged about 56 years. There is wide spread of Corona everywhere, so there is likelihood that he may be infected because of the same. So considering his age and period of custody he is undergone, he be released on bail.

3 Prosecution, however, resisted the bail application by filing detailed say. Ld.APP reiterated the same grounds as relied on by the prosecution in the Say. In addition to it, it has been submitted by her that Ld.APP placed her reliance on the same and in addition to it, submitted

that said offence is very serious in nature. Victim girl is below 12 years of age. The applicant does not have any permanent place of residence in Mumbai. Because of happening of this heinous incident, the ladies from the area are still living under fear. They all are in trauma because of said incident. The accused if released on bail, he will contact with the witnesses, victim girl and may pressurise to them and then no fear of law will remain in his mind. So he should not be released on bail.

4. Heard both the sides at length.

5. Perused the application, say filed by prosecution and record. Perused the record i.e. charge-sheet which is come on record. Ld.Advocate for applicant submitted that accused is old aged person. There is no possibility of committing any such crime by him. So he needs to be released on bail.

Per contra to it, Ld.APP submitted that there is ample evidence stating that he is involved in committing serious crime. Victim and all the ladies from the area are still in trauma because of the incident and applicant is not having permanent place of residence in Mumbai. So his application be rejected. On the backdrop of rival submissions made by both sides, I have gone through the statement of the victim girl. It reveals that victim is knowing the accused. Further according to her statement, accused was calling her for playing some game as 'touch-touch'. He called the victim inside his house. She also went. Then accused said that for playing this game, there is need of removing her clothes. He then actually disrobed her and disrobed himself also. Then he started touching her

indecently all over her body including her private part. He did fingering. The victim somehow rescued herself and called her mother. These are the contents of statement given by the small girl aged about 10 years only.

7. Now on the backdrop of this, if we perused the history given by said victim girl to the medical officer, it is prima-facie suggesting that, the assailant(i.e. accused) by taking her at his house, touched her indecently and committed fingering in her vagina. So the statement of the victim girl corroborates with the history given by her to the medical officer at the time of her medical examination. On this backdrop, though it is argued for applicant that there is nothing the charge-sheet suggesting his involvement in the crime on record, needs to be viewed cautiously.

No doubt, offence is very serious in nature. Accused is an aged person of 56 years of age and victim is hardly about 10 years, still by luring her, accused had taken the girl inside his house and committed this offence. Unfortunately, the facts of committing this acts by accused with victim came out, otherwise it would have also been dragged in the dark if same has not been observed by the near one, mother of victim girl and her neighbourers.

On this backdrop, I therefore, do find reasonable base in the submissions made by the prosecution that, considering nature of offence, punishment prescribed for it, age of the victim girl, nature of assault caused to her and the fact that she is still under fear, this court is of the opinion that possibility cannot be ruled out that after release on bail, accused may again get opportunity to contact with the victim girl. The

possibility also cannot be ruled out that he may cause harm to the victim. In these circumstances, considering total record and the reasons mentioned above, this court is not inclined to grant bail to the present applicant.

8. Hence, in the circumstances and for the reasons mentioned above, this Court proceed to pass the following order :-

ORDER

Bail Application(Exhibit-5) is hereby rejected and disposed off accordingly.

Dt.29.10.2020

**(H.C.SHENDE)
Special Judge under P.O.C.S.O. Act,
Sessions Court, Borivali Division,
Dindoshi.**

Dictated on	: 29.10.2020
Transcribed on	: 3.11.2020
Signed on	: 6.11.2020
Sent to dept. on	:

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

9.11.2019 at 12.35 p.m

Mrs.S.A.Kapare

UPLOAD DATE AND TIME

NAME OF STENOGRAPHER

Name of the Judge : HHJ H.C.Shende(CR No.12)

Date of Pronouncement of judgment/order

: 29.10.2020

Judgment/order signed by P.O. On

: 6.11.2020

Judgment/order uploaded on : 9.11.2020