

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.4)

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,

Jogeshwari(East),Mumbai 400 102.

..Applicant/accused

Vs

1. The State of Maharashtra

2. The Senior Inspector of Police

(Aarey Police Station)

..Respondents

Advocate Mr.Khwaja Shaikh for the applicant/accused.

Spl. APP Ms. Malankar for the State.

CORAM: H.H.THE SPECIAL JUDGE,

SMT. H.C. SHENDE, (C.R.NO.11)

DATE : 29th January, 2021.

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, this is second bail application. The applicant was arrested in the matter on 25.8.2020 and at present he is in judicial custody. It is further submitted by Ld.Counsel for accused that, applicant is falsely implicated in this matter by tutoring the victim girl. He is not guilty of committing any crime. It is totally false case. Name of the applicant is incorrectly mentioned in the FIR. He has neither intimidated nor threatened the complainant or his family. He has not done any overt act with the victim. He is an innocent person and he do not have any connection with crime. No case registered against him prior to this FIR. He is having clean record. No such incident of outraging modesty had ever been taken place. Out of previous quarrel between the applicant and relatives of the complainant, they all have implicated him falsely in this 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 old aged person of 56 years. He is only earning member of his family. He is having good reputation in society. So considering his age and period of custody he is undergone, he be released on bail.

Ld.Advocate for the accused relied on judgment of the Hon'ble Delhi High Court in case of **Altaf Ahmed @ Rahul V/s State (GNCTD of Delhi) in CRL.A.474/2020** and submitted that, facts of the above matter

are similar to this matter and said accused was acquitted in the said matter. So this applicant at least needs to be released on bail.

3 Prosecution, however, resisted the bail application by filing their detailed say Exh.5. Ld.APP Smt. Malankar reiterated the same grounds those are relied on by the prosecution in the Say. In addition to it, it has been submitted by her that, said offence is very serious in nature. Victim girl is aged of 10 years only i.e. she 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. The medical tests of victim are still continued. Victim and other ladies of that area are living under trauma because of said incident. The accused if released on bail, he will certainly contact with the victim girl and may pressurise to her. If he is set at liberty, then fear of law will not remain in mind of rest society persons. Earlier bail application was rejected. No cogent grounds made out by the applicant to release him on bail. The citation relied on by the applicant not applied in the present matter. The said matter decided on merit finally and facts are different. 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 filed on record. Ld.Advocate for applicant submitted that, accused is old aged person. There is no possibility of his committing any such crime. So he needs to be released on

bail. He gave more emphasis on judgement cited supra.

Per contra to it, Ld.APP submitted that, the record prima-facie showing that, there is ample evidence available against present accused stating that he is involved in committing this serious and heinous crime. Victim is still in traumatic condition because of the incident. This applicant is not having permanent place of residence in Mumbai, his application needs to be rejected.

On the backdrop of rival submissions made by both sides, I have gone through the record including the statement of the victim girl. It reveals that victim is knowing to the accused. Further contents of her statement suggesting that, accused called her for playing game 'touch-touch'. He took the victim inside his house. Then accused said that, 'for playing this game, there is need of removing her clothes.' He then actually disrobed her and disrobed himself also. He then 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, before the authorities.

7. Now on the backdrop of this, if we perused the history given by said victim girl to the medical officer, it is also 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. The victim called her mother for

help after this incident and her mother saw her in half nude condition.

Admittedly, the offence is very serious in nature. Accused is quite aged person of 56 years of age. On the other hand, the victim is about 10 years only. Prima-facie record suggesting that, the accused by taking the innocent girl inside his house sexually assaulted her and committed this offence. The earlier bail application filed by accused after charge-sheet was decided and came to be rejected. Now no new grounds made out by accused to release him on bail. The judgement relied on by Ld.Advocate for the accused involves different facts than the case in hand. The said matter finally decided on evidence. This court therefore humbly want to make it clear that, at this juncture, we cannot jump over the conclusion that victim was tutored by her mother and it is false case. Prima-facie record available against the accused showing his involvement in crime.

On this backdrop, I do find reasonable substance in the submissions made by the prosecution that, considering nature of offence, age of the victim girl, nature of sexual assault caused to her at the hands of accused, and as she is still under fear because of said incident, this court is of the opinion that, as the accused is the neighbourer of the victim, so the possibility cannot be ruled out that, he if released on bail, may come in contact with the victim girl. There is every possibility that he may cause harm to the victim. Considering the total circumstances on the backdrop of record and the reasons mentioned above, this court is not inclined to grant bail to the present applicant.

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

ORDER

Bail Application(Exhibit-4) is hereby rejected and disposed off accordingly.

Dt.29.1.2021

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

Dictated on : 29.1.2021
Transcribed on : 29.1.2021
Signed on : 30.1.2021
Sent to dept. on :

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

30.1.2021 at 3.05 p.m

Mrs.S.A.Kapare

UPLOAD DATE AND TIME

NAME OF STENOGRAPHER

Name of the Judge

: Smt. H.C. Shende(CR NO.12)

**Date of Pronouncement of
judgment/order**

: 29.1.2021

**Judgment/order signed by
P.O. On**

: 30.1.2021

Judgment/order uploaded on

30.1.2021