

ORDER BELOW EXH.1

(Mohan Chandrashaha Kivnar 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. 432/2019 registered at Sahkarnagar Police Station for the offence punishable under sections 376(2)(n), 506 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 17 years lodged report stating that she was learning classical music from accused Dhananjay Dixshit since third standard. When she was attending college, after her college hours she was going to attend music class in between 4.00 pm to 6.00 pm at the house of accused Dhananjay. Since February-2019, accused Dhananjay started taking music class of victim alone and when inquiry was made, he told that there was examination of victim, therefore he was going to concentrate on her. On 04.4.2019, victim went to attend music class in the house of accused Dhananjay when she was taking notes, accused Dhananjay came from backside, tied her mouth with the help of Dupatta, abused her, slapped her, removed her jeans and knicker and then threatened her to publish her obscene photographs on social media and then committed forcible sexual intercourse with her. She tried to run away but accused Dhananjay brought knife from kitchen and threatened to see her if incident is disclosed to anyone. Due to his threats, victim kept silence and accused Dhananjay then dropped her at her house. Act was repeated on 25.4.2019 by giving similar threats. Then, victim stopped to attend music class for about 1 month and she was then acquainted with bus conductor Suvarna Hole. Suvarna called victim for celebration of birthday of her daughter and she was going to

attend the same through auto rickshaw of applicant. Applicant used to inquire with her, then victim narrated to him about the acts of accused Dhananjay.

3] On 01.7.2019, accused Dhananjay made phone call to victim and asked her to come at class as his mother was there. Victim went at Balajinagar bus stop and accused Dhananjay took her from his Axtiva vehicle at Rajgad Apartment, Balajinagar. Meanwhile, applicant and other accused Dhananjay were also acquainted with each other and accused Dhananjay called present applicant in his class.

4] In supplementary statement dt. 31.7.2019 victim made allegations against applicant Mohan stating that on 01.7.2019 when accused Dhananjay called her at Balajinagar, Rajgad Apartment, present applicant was also called by the accused Dhananjay. Accused Dhananjay went away by locking the door and then, present applicant forced victim to marry with him, she refused, he beat her and committed forcible sexual intercourse with her. Then, he threatened to defame her if incident is disclosed to anyone. Later on, accused Dhananjay came and applicant went away. Accused also did forcible sexual intercourse with victim.

5] According to applicant he is falsely implicated in this matter. In F.I.R. there are no allegations against the applicant. Therefore, story made by victim in her supplementary statement is not reliable. It is afterthought. No such incident had taken place. There is delay in lodging report. Investigation is practically over. He is doing business. His family members are depending on him. He is permanently residing at Kondhwa Budruk, Pune. He has no criminal antecedents. He is ready to abide the conditions. Hence, he prayed to release him on bail.

6] APP and I.O. objected this application on the ground that investigation is in progress. Statement u/s. 164 of Cr.P.C. of victim is yet not recorded. Applicant will pressurize victim and witnesses. There is possibility of tampering prosecution evidence. So, they prayed to reject the application.

7] Allegations against the applicant are serious. From supplementary statement of victim role attributed to applicant can be gathered. Victim made allegations of forcible sexual intercourse by applicant with her by forcing her to marry with him and thereafter, another accused Dhananjay Dixshit committed forcible sexual intercourse with victim on same day at same place. Therefore, offence u/s. 376D is also added in this matter, hence, there is gravity of the offence. Advocate of applicant tried to show the photographs of victim on social media and submitted that she was in normal and happy mood after alleged incident. Therefore, no such incident had taken place.

8] In support of his contention, Advocate of applicant relied on authorities cited in (i) **Farooq @ Farooq Ahmed V/s. The State of Karnataka, 2014 (5) 26**, in which it is observed that if there is no allegation of recent sexual assault, alleged assault had taken place several months prior to complaint, considering delay in lodging report, bail was granted to applicant. (ii) **Sandeep Suresh Patil V/s. The State of Maharashtra, 2018 ALL MR (Cri.) 5242**, in which it is observed that by considering discrepancy with regard to place of incident, statement of parents of victim and spot panchanama prepared at the instance of victim and also due to fact that investigation is completed, bail was granted. (iii) **Gulzar Singh V/s. State of Punjab, 2014 (7) 264** in which it is observed that due to vague and general allegations against applicant and due to fact that those are highly

improbable, bail was granted to applicant.

9] Ratios laid down in above cited rulings are noted. In case in hand, in supplementary statement, victim made detail allegations against the applicant, and in that regard, investigation is still going on. Therefore, at this initial stage, there is possibility of tampering prosecution evidence. Applicant is 34 years old and victim is only 17 years old. Applicant is in dominating position over victim. Police papers, prima facie shows involvement of applicant in offence. There is possibility of giving threat and pressure by applicant to victim and witnesses. Hence, at this initial stage, in view of gravity of offence, it is not proper to release applicant on bail, hence application deserves to be rejected and following order:-

ORDER

Application is rejected.

Sd/-

Pune.

Date – 17.9.2019.

(R.V.Adone)

Addl.Sessions Judge, Pune.

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

Name of Steno	- Sau. Arya Nikam (Stenographer G-1)
Court Name	- Smt. R.V.Adone, Addl.Sessions Judge,Pune.
Date of Order	- 17.9.2019.
Order signed by P.O.	- 17.9.2019.
Order uploaded on	- 18.9.2019.