

ORDER BELOW EXH.1

(Yogesh Ganesh Dhamne 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. 23/2020 registered at Wakad Police Station for the offence punishable under sections 363, 366, 376, 376(n) of the Indian Penal Code and under sections 3,4,5 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that mother of victim aged about 16 years 4 months lodged report of her kidnapping. During investigation and after recording statement of victim it revealed that she was acquainted with applicant as applicant was working in their village and residing in their house. When parents of victim used to go in their mess, victim, her sister, brother and applicant used to remain in house. There was love affair between victim and applicant and when nobody was in house, they both kept sexual relationship and as a result of which victim became pregnant. Due to fear of her father they decided to run away and on 09.1.2020 they both went to Risod, Dist-Washim by travel, at the house of applicant, victim delivered male child.

3] According to applicant he is falsely implicated in this matter. It is a case of love affair. There is delay in lodging report. Victim is more than 17 years old therefore, she knows the consequences of the act. There was no force from the applicant. Victim left the house at her own accord. Applicant is 23 years old and freelancer. He is earning member of his family. He is permanently residing at Risod, Dist-Washim. 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 ground that investigation is in progress. Applicant repeatedly committed sexual intercourse with victim and victim became pregnant and has to deliver child in minor age. Applicant will pressurize victim and witnesses. There is possibility of tampering prosecution evidence. There is possibility of the absconding of applicant. So, they prayed to reject the application.

5] Allegations against the applicant are serious. Applicant is sufficiently interrogated. From statement of victim role attributed to applicant can be gathered. It revealed that due to work, applicant was residing in the house of victim and there was love affair between them. When nobody was in house they kept sexual relationship. Later on, they eloped and went to Dist-Washim at the house of applicant. Victim delivered male child. Victim is more than 17 years old and applicant is 23 years old. Victim has attained age of sufficient maturity and knows the consequences of act.

6] In this context Advocate of applicant relied on authorities cited in **Bail Application No. 2632/2019 between Anirudha Radheshyam Yadav V/s. The State of Maharashtra, 2020 CLU 500** in which it is observed that so far as offences punishable under Section 4, 6, 8 of Protection of Children from Sexual Offences Act is concerned, it may be stated that the provisions of POCSO Act are, though, stringent in nature, would not deter the Court to grant or refuse bail in order to secure the ends of justice. The conduct of the victim is indicative of the fact that she had left the home of her parents by her own will and that she had surrendered to the physical desires of the applicant out of her love and affection for him. She has sufficient knowledge and capacity to know full import of what she was

doing and had only thereafter voluntarily joined the complainant. Due to peculiar facts of case bail was granted to applicant. In above cited ruling, victim was 14 years 11 month old and applicant was 25 years old. From statement of victim it appears that she left the house secretly with her belongings and travelled with applicant.

(ii) **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.

7] Ratios laid down in above cited rulings are noted. There are medical papers about delivery of child by victim. It prima facie appears that due to acquaintance, love affair, victim and applicant eloped, victim left the house at her own accord, she resided with applicant for considerable period without complaining. About the previous act, she never complained. These are mitigating circumstances. Moreover, considering nature of offence and allegations, investigation is practically over. Personal custody of applicant is not required. He has no criminal antecedents. He is only 23 years old and freelancer and his family members are depending on him. He is permanently residing at Risod, Dist-Washim. No purpose would serve by keeping the

applicant behind bar for unknown period. Due to all above reasons application deserves to be allowed with following order -

ORDER

- 1] The application is allowed.
- 2] The applicant Yogesh Ganesh Dhamne be released on executing P.R. bond of Rs.30,000/- with one or two solvent sureties in the like amount. One local surety be furnished.
- 3] The applicant shall not tamper the prosecution evidence in any manner.
- 4] The applicant shall attend Wakad Police Station on every Monday between 11.00 a.m. to 2.00 p.m. till the charge-sheet is filed.
- 5] The applicant shall not harass, threat and pressurize the victim.
- 6] The applicant shall co-operate investigating machinery as and when required.
- 7] Prior to furnishing surety, the applicant shall submit his address proof, mobile number and inform about the change in address and mobile number.

Pune.
Date – 09.11.2020.

(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	- 09.11.2020.
Order signed by P.O.	- 09.11.2020.
Order uploaded on	- 10.11.2020.