

ORDER BELOW EXH.1

(Dilip Lot V/s. State of Maharashtra)

1] Perused application and say. Heard Advocate for applicant and APP for the State. Notice issued to first informant and perused reply filed by her.

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. 277/2018 registered at Dehuroad Police Station for the offences punishable under sections 376 (2) of the Indian Penal Code and under sections 3 & 4 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that, mother of victim aged about 9 years lodged report stating that, prior to one year in June, she was serving in Adhar hospital. At that time, victim was residing with her mother-in-law at Uttamnagar, Pune at the house of her brother-in-law. Present applicant i.e. father-in-law of first informant used to maintain victim. In evening, when first informant returned from the work, victim told that, Dadaji i.e. her grandfather inserted his private part in her private part. First informant verified her private part and there was swelling. She then took victim at Vatsala Clinic and Dr. Vatsale told first informant that, victim was sexually assaulted. Thereafter, first informant took victim to Dr. Ganesh at Adhar hospital who advise to take victim at YCM hospital for check-up then victim was also referred to Sassoon hospital. First informant then informed to her husband on phone. But after going to house, her husband convinced first informant that, there are internal disputes and there will be defamation of family members, so he asked her to keep quite. At that time, report was not filed. Thereafter there are continuous quarrel between first informant and her husband. After examination, husband of first informant was taking victim to Jammu Kashmir along with his father i.e. present applicant. First informant resisted for the same. Quarrel took place and she lodged report about the incident.

3] According to applicant, he is falsely implicated in this matter. No such incident has taken place. He never touched victim girl. There is domestic quarrel between first informant and her husband. First informant threatened to file false report in the police station. She left the house and she used to visit to house of her husband regularly. Victim never stated about sexual intercourse with her by her grandfather. Statement of victim u/s. 164 of Cr. P. C. is recorded in which no allegations are made by her. Moreover, she was inquired before child welfare committee and Woman vigilance cell but she did not make any allegation against applicant. Most importantly medical report of victim is negative. She herself never give history of sexual assault. History is given by her mother.

4] It is further submitted that, first informant filed criminal case against her husband and family members for offences u/s. 498(A), 323, 504, 506 r/w. 34 of the Indian Penal Code and later on she resiled from her statement and therefore, all accused were acquitted. There is substantial delay in lodging present report. Investigation is already completed. Applicant is old aged person suffering from various ailments. He is working as watchman and his family members are depending on him. He is resident of Dehuroad, Pune and has no criminal antecedents. He is ready to abide the conditions. Hence, he prayed to release him on bail.

5] APP and I.O. objected this application on the grounds that investigation is in progress. Statement of victim under section 164 of Cr P C is recorded. Charge-sheet is filed. Considering relationship, applicant will pressurize victim and witnesses. There is possibility of tampering prosecution evidence. Applicant was absconded since lodging report. So there is further possibility of his absconding. So, they prayed to reject the application.

6] Allegations against the applicant are serious. Applicant is

sufficiently interrogated. From statement of first informant, role attributed to applicant can be gathered. There is allegation of forcible sexual intercourse by applicant with victim i.e. his grand daughter. Statement of victim is recorded who stated that, there are frequent quarrels between her mother and father and her mother was insisting her to tell against her grandfather i.e. present applicant. In her statement which was recorded before Presidents of various Woman Welfare Committee, she did not make allegations against her grandfather i.e. applicant. There are statements of social workers who stated about informing incident by first informant to her prior to one year. But it is material to note that, statement of victim is recorded in presence of above social workers. In addition to that, there is statement of Dr. Yamini who stated that, victim was very quite and told about frequent quarrels between her mother and father and her mother told to give complaint against her grandfather. One Dr. Ganesh stated that, he did not examine victim.

7] Medical certificate of victim is on record and history of sexual assault is given by mother of victim. It is specifically mentioned that, victim did not give history of any sexual assault. Doctor opined that from history and clinical examination, there is no evidence of any hymenal and physical injury, however, attempt of incomplete penetration cannot be ruled out. It appears that, statement of victim u/s. 164 of Cr. P. C. is recorded and charge-sheet is filed. Advocate of applicant filed on record copies of previous criminal case filed by first informant against all family members u/s. 498(A) etc of Indian Penal Code. There are medical reports of applicant and attendance certificate. In addition to that, applicant filed on record whatsapp conversation between first informant and so-called lover and their photographs together. Applicant filed on record report of Social workers, Child Guidance Clinic in respect of counseling to victim, first informant and in that report also it is mentioned that, false allegations are made against applicant. At present, first informant resisted bail application by filing her

say.

8] However, after completion of investigation, charge-sheet is filed. Considering statement of victim, medical reports, there are mitigating circumstances. In view of fact that, charge-sheet is filed, personal custody of applicant is not required. He is 68 years old and doing service. His family members are depending on him. However, while considering his bail application, in view of gravity of the offence, it is proper to impose strict conditions. Hence, no purpose would serve by keeping applicant behind bars. Due to all above reasons, application deserves to be allowed with following order -

ORDER

- 1] The application is allowed.
- 2] The applicant Dilip Samera @ Samira Lot be released on executing P.R. bond of Rs. 70,000/- with two solvent sureties in the like amount. Sureties be verified by police. Local sureties be furnished.
- 3] The applicant shall not tamper the prosecution evidence in any manner.
- 4] After his release from the jail, the accused shall attend the concerned Police Station every 1st Monday of the month between 11.00 a.m. to 1.00 p.m. till one year.
- 5] The accused shall attend each and every date of proceeding.
- 6] The applicant shall not meet harass, threat and pressurize the victim. Applicant shall not visit the place of residence of victim.
- 7] The applicant shall co-operate investigating machinery as and when required.
- 8] 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 – 16.11.2019.

(R. V. Adone)
Addl. Sessions Judge, Pune.

CERTIFICATE

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

Name of Steno	- G. S. Chougule
Court Name	- Smt. R.V.Adone, Addl.Sessions Judge,Pune.
Date of Order	- 16.11.2019.
Order signed by P.O.	- 18.11.2019.
Order uploaded on	- 18.11.2019.