

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE, PANVEL-
RAIGAD**

Cri.Bail application No.288/2020
Order Below Exh.1
(CNR No.MHRG170015392020)

The State of Maharashtra V/s. Ram Shankarrao Bembare

(Passed on 22/03/2022)

1] Applicant/accused - Ram Shankarrao Bembare has filed application for regular bail u/sec. 439 of Cr.P.C., of the offences punishable u/sec.376(2)(d), 376(f), 376(2)(i), 354, 354(b), 377 of I.P.C and sec.4, 5, 6 and 8 of POCSO Act and sec.75 & 82 of Juvenile Justice (Care and Protection of Children) Act, in crime No.60/2018, police station Karjat.

2] Perused application, say and record.

3] Ld.Adv. for applicant/accused submitted that, it is a part heard matter. Evidence of witnesses does not supported to the prosecution story that, accused Ram Bembare is the main culprit, who has sexually assaulted to the victim girls. Prosecution delayed the trial and could not proceed on priority base due to which, sec.35(2) of POCSO Act is violated. In the charge-sheet, document 13/3 para No.12(i) shows the contradictory statement with the say of investigation officer regarding the accused's character. Medical report of victim No.1, particularly para No.5

and 6 shows no any injury seen. Though hymen tear, but old injury seen. Rest of medical reports of another victims are totally nil. No evidence of sexual assault. Opinion of medical officer also nil. Statement of witness Asha Malpati contradicted with the statement of parents of both victims, therefore reliance cannot placed on their evidence. In the para No.9 of cross-examination of informant, nothing incriminating evidence found against accused Ram Bembare.

4] Ld.Adv.for applicant/accused further submitted that, accused is languishing behind bar since 4 years and trial could not conclude earliest, therefore his fundamental right to leave is violating. There are huge number of witnesses as per list and only 6 witnesses have been examined. Much time will require for the concluding trial. Till then, it is not just and proper to keep this accused behind bar, particularly when, no incriminating evidence found against him. Lastly, prayed for his regular bail.

5] Ld.A.P.P Smt.Wade submitted that, medical report of all victims are not negative. Medical reports of victims who are actually subjected to sexual assault by the hands of accused Ram Bembare found positive. Earlier 3 bail applications of this accused already rejected. Hon'ble High Court also rejected his bail application. After rejecting his 3rd bail application, he has moving this application which is 4th application, but he does not shown any

change in circumstances. Material point is, none victim examined till date. It is a part heard matter and possibility to tamper and flee away from the court of justice cannot be ruled out. Prosecution is ready to conduct this matter on priority basis and try to conclude this matter as early as possible. Hence, application is not tenable and entitled for reject.

6] I have gone through the record and found, on 02/11/2018 charge framed against accused persons by the Ld. Then Presiding officer. Thereafter, P.W.1 examined on 25/04/2019. P.W.2 examined on 25/04/2019, 26/04/2019, 03/06/2019 and 04/06/2019. P.W.3 examined on 11/07/2019 and 12/07/2019. P.W.4 examined on 15/10/2019 and 25/11/2019. P.W.5 examined on 09/12/2019, then her cross-examination conducted on 03/03/2020 and further cross-examination conducted and concluded on 02/03/2022.

7] Since framing of charge, the Then Ld.Presiding officer and this court tried to examine prosecution witnesses on priority basis continuously, but since the month of March 2020 Covid Pandemic is proclaimed and judicial work was suspended for some months as per the direction of Hon'ble Apex Court, therefore prosecution was unable to examine further prosecution witnesses including the victims. It is pertinent to note here that, after Corona period, prosecution again gear up this matter and examined

prosecution witnesses properly. Therefore, it cannot be stated that, prosecution delayed the trial deliberately and violates sec.35(2) of POCSO Act.

8] Moving to the merit of the matter. Considering the nature of offence, it falls under the not only serious, but heinous category. Statement of victim girls u/s.164 of Cr.P.C clearly reveals that, accused Ram Bembare was sexually assaulted them. Needless to say that, 6 witnesses have been examined, but none victim examined till date. Victims are the important material witnesses to prove the offence of sexual assault. Even though, the prosecution witnesses who have been examined already deposed the role of this accused in this offence which cannot be oversight.

9] Languishing behind bar for some years and non-commenting adversely on the character of accused in the charge-sheet in para No.12 is not the ground to release this accused in the offence which is heinous in nature and committed against dumb and deaf minor victim girls. Their physical conditions shows their helplessness. Paragraph 12 of charge-sheet is prescribed format to show whether accused is habitual criminal or not. However, any culprit who is arranged for committing rape may not be a habitual criminal, but he could be the culprit of heinous offence, hence the submission on this point of Ld.Defence advocate is not considerable at this juncture.

10. Medical reports of victim girls shows, some of victims sexually assaulted and their hymen tear seen. Old injury also seen on hymen which is itself proved that, those victims have been subjected to sexual assault. Statement of victims, evidence of examined witnesses, medical reports have been indicated that, Ram Bembare is the culprit, who has committed this offence and to determine his role and involvement to connect this offence, complete trial is required. Hence, at this juncture, I do not find any justifiable reason to allow bail application of this accused, particularly when his earlier bail application vide Exh.47 was rejected and it is subsequent bail application does not shown any change in circumstances. Hence, I pass following order.

ORDER

Bail Application (Exh.103) is hereby rejected.

Panvel,
Date : 22/03/2022

(Madhuri Anand)
Additional Sessions Judge,
Panvel-Raigad.

Dictation started on : 4.30 p.m
Dictation concluded on : 4.55 p.m

Note :- Argument of Ld.Adv.for applicant/accused heard on
10/02/2022 and argument of Ld.A.P.P heard on

02/03/2022 and kept for order on 09/03/2022. On this date, court was busy in hearing of Spl.POCSO case 50/2021 and 68/2021, hence kept for order on 22/03/2022 and order passed on same day.

CERTIFICATE

I affirm that the contents of this PDF file order are same, word to word, as per the original order.

Name of stenographer	P.S.Mhatre
Name of Court	District Judge-2, Panvel-Raigad
Date of Dictation	22/03/2022
Order signed by the P.O on	22/03/2022
Order uploaded on	25/03/2022