

ORDER BELOW EXH.1

1] Perused application and say filed by APP and Investigating Officer. Perused documents. Heard Advocate for applicant and APP for State.

2] This second bail application is filed under section 438 of Cr.P.C. by applicant in respect of apprehension of his arrest in C.R. No.431/2017 registered at Bhosari Police Station for the offence punishable under sections 363, 376(2) (i) (n) of the Indian Penal Code and under sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that father of victim aged about 16 years lodged report of her missing. During investigation and after recording statement of victim, it revealed that, there was love affair between her and applicant. Firstly they ran away in September 2018 and resided in Mankhurd, Mumbai then they came to Pune. Later on in August 2018 she and applicant again went to Mumbai and resided at Ghatkopar, Mumbai till March, 2019 by taking room. In her supplementary statement dt. 22/08/2019 she made allegations of forcible sexual intercourse by applicant with her under pretext of marriage. After registration of report, present applicant was called in police station for the purpose of inquiry and he was informed that action will be taken against him.

3] According to applicant there was love affair between him and victim and when victim became major they both married on 01.11.2019 and now they are living together. At present, victim is more than 18 years and applicant is earning member of family. Due to

levelling of offence u/s. 376(2)(i) (n) of Indian Penal Code and section 4, 8 and 12 of Protection of Children from Sexual Offences Act he has apprehension in his mind about arrest. Victim is more than 16 years old and knows the consequences of act. Applicant is only earning member of his family. There is delay in lodging report. He is ready to cooperate investigating machinery and prayed to grant protection u/s. 438 of Code of Criminal Procedure.

4] APP and Investigating Officer objected the application on the grounds that, investigation is in progress. It is necessary to investigate the matter by going to rented room at Mankhurd, Mumbai. Spot panchnama is to be prepared. There are allegations of forcible sexual intercourse for 7 to 8 times by applicant with victim. So medical examination of applicant is to be conducted. Since registration of offence, applicant was absconded and there is possibility of tampering prosecution evidence by giving threats and pressure to victim and witnesses. So they prayed to reject he application.

5] Record shows that, firstly missing report was filed. Birth certificate of victim shows her birth date 26/10/2001 so at the time of filing missing report dt. 30/09/2017 she was prima facie more than 16 years old. During investigation, statement of victim is recorded on 12/06/2019 and 22/08/2019. In first statement, she stated about love affair between her and applicant and fact that, since September 2017 they went various places and resided together at Mankhurd, Mumbai, Ghatkopar etc. in that statement, she refused for medical examination. In statement dt. 22/08/2019, it is her contention that, marriage

proposal given by family members of applicant was refused by her father. Her father decided her marriage with someone else and she refused for it. In August, 2018 she went with applicant without telling to her family members and they resided together in rented room where applicant committed forcible sexual intercourse with her. Then her medical examination is conducted. There is evidence of vaginal penetration with no evidence of fresh injuries. Victim gave similar history of love affair with applicant and history of consensual vaginal penetrative intercourse and history of residing at various places.

6] Most importantly in statement u/s. 164 of Cr. P. C. victim narrated that, there is love affair between her and applicant. Her family members decided her marriage with someone else and she and applicant ran away in September, 2017 resided in rented room for 20 days. When they were found her family members sent her in State of Bihar for about one year. In August, 2018 she came for Rakhi pournima festival and at that time, she again ran away with applicant to Mankhurd, Mumbai and later on her father lodged report. She has no grievance against applicant. She is ready to marry with applicant after completing 18 years of her age. Accordingly, she gave statement u/s. 164 on 22/07/2019.

7] Along with application applicant filed on record copy of previous first bail application u/s. 438 of Cr.P.C. and same was rejected. He filed on record copy of Marriage Certificate, birth certificate of victim, his Aadhaar Card, Aadhaar card of victim, photographs and one affidavit of victim in respect of her marriage with

applicant on 01/11/2019. On the basis of these documents and due to subsequent development, applicant prayed that there are mitigating circumstances, hence it is necessary to grant him protection. In respect of tenability of second anticipatory bail application, Advocate of applicant relied on authority cited in **Kamlesh Dhirajlal Gandhi V/s. State of Maharashtra & Anr., 2007 ALL MR (Cri.) 1572**, in which it is observed that successive applications for anticipatory bail after rejection of earlier application would be tenable.

8] Ratio laid down in above cited ruling is noted. First bail application was rejected on 11.9.2019. At present, there are documents to show marriage between applicant and victim after rejection of first bail application. In missing report, age of victim is 16 years and in affidavit dt. 27.11.2019, her age is mentioned as 18 years. Birth certificate shows her birth date 26.10.2001. So she has attained age of sufficient maturity and knows the consequences of act. As per her statement before Magistrate u/s. 164 of Cr. P. C., after completion of 18 years she married with applicant. In such circumstances, in view of subsequent development, there are mitigating circumstances. Investigation is practically over and in view of all above reasons, apprehension in the mind of applicant about his arrest is reasonable. After marrying with victim, now they are residing together. He is 22 years old and doing service. He has no criminal antecedents. And due to levelling of offence u/s. 376 of IPC and section 4 of POCSO Act, in view of reasonable apprehension, it is necessary to grant him protection u/s. 438 of Cr. P. C.

ORDER

- 1] Application is allowed.
- 2] In the event of arrest in Crime No. 431/2017 in Bhosari Police Station, applicant Shubham Dinkar Thorat be released on executing P.R. bond of Rs. 30,000/- with one or two solvent sureties in the like amount.
- 3] The applicant shall not tamper the prosecution evidence and shall not pressurize victim in any manner.
- 4] The applicant shall attend Bhosari Police Station on every Monday between 11.00 a.m. to 2.00 p.m. till filing of the charge-sheet.
- 5] The applicant shall not harass victim.
- 6] The applicant shall co-operate investigating machinery as and when required.
- 7] The applicant shall submit his address proof, mobile number and inform about the change in address and mobile number.
- 8] Inform Bhosari Police Station accordingly.

Pune.
Date – 04.12.2019.

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

“ 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	- 04.12.2019.
Order signed by P.O.	- 05.12.2019.
Order uploaded on	- 05.12.2019.