

MHCC050004802020



**IN THE COURT OF SPECIAL JUDGE UNDER THE PROTECTION
OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 AT
BORIVALI DIVISION, DINDOSHI, MUMBAI
BAIL APPLICATION (EXHIBIT-6)
IN
POCSO SPECIAL CASE NO.41 OF 2020**

Sulabh @ Shiv Bachhan Yadav

Age : 45 Years, Occ. : Driver.

R/o. Yadav Chawl, Kondivita Village,
J. B. Nagar, Ram Krishna Mandir Road,
Andheri (E), Mumbai-400 059.

....Applicant/accused

V/s.

**The State of Maharashtra
(Through MIDC Police Station)**

.....Respondents

Advocate Mr. Ashok Yadav for Applicant/original accused.
Spl. APP Mrs. Geeta Malankar for State.

**CORAM: H.H.THE SPECIAL JUDGE,
SMT. H.C. SHENDE, (C.R.NO.12)**

DATE : 16th September, 2020

ORDER

The applicant has moved this application u/s.439 of Cr.P.C. for grant of bail in C.R. No.508/19 for the offences punishable U/sec.363, 376(2)(n), 506 of IPC and u/s.6 and 10 of the Protection of Children from Sexual Offences Act, 2012 (Hereinafter referred to as “POCSO Act” in short) registered with MIDC Police Station.

2. It is argued on behalf of the applicant/accused that the applicant is innocent person. The FIR is false. He was arrested on or about 15/11/18 and he is in custody since last 10 months. There are so many contradictions and inconsistencies in the statement of the prosecutrix and the medical report. According to the victim herself, her parents used to harass her. Her mother was using bad words and abusing her and so she decided to go to Hyderabad. Actually she left the house and has taken down bus for Hyderabad so the accused has no concern with the crime. He is not at any fault. He is not habitual offender. He is a person of a considerable age. The victim also is not a minor girl. She is about 17 years of age, knowing well what is going surrounding to her. The Learned Advocate for the applicant relied on the Judgment of the Hon'ble Bombay High Court in case of **Aniruddha Radheshyam Yadav V. The State of Maharashtra (Criminal Bail Application No.2632/19)** and argued that in this matter the Hon'ble High Court pleased to release the accused on bail. Same is the condition in the present matter so he be released on bail.

3. The prosecution, however, resisted this bail application on the grounds mentioned in their say in detail.

The Learned APP relied on the same. It is further argued by her that this is very serious offence committed by the applicant and there is prima facie evidence available against the applicant showing that since last about two months prior to the FIR, the victim was not only molested but also forcefully raped by the applicant.

4. It is further argued by the Learned APP that the victim tried to give information of it to her parents but they denied to accept it by saying that

may be because the victim was not wishing to go to school, she might have created such story. The victim was helpless as nobody was believing her, listening to her. She was tortured by the applicant so she as fed up with all the circumstances, was in trauma. She felt helpless in the circumstances so she decided to leave her own house. She was later on taken into custody by the railway police. The victim had given true information to the medical officer. The medical report also suggesting with the prima facie opinion that, 'forceful sexual assault cannot be ruled out'. The statement was given by the victim in which she told about the physical assault on her at the hands of the applicant. The applicant as per the record is of a considerable aged person and about 45 years and the victim girl is below 18 years of age. Prima facie we cannot say that it is a love affair or any act done out of intimacy by the applicant so he needs to be released on bail. The application needs to be rejected.

5. Heard both sides at length. Perused the record.

6. The Learned Advocate for the applicant relied on the Judgment of **Aniruddha (cited supra)**, but I am of the humble opinion that the said matter is altogether different than the present matter. It appears from the said order of the Hon'ble High Court that the victim girl of this matter was 14 years and 11 months old and the applicant was 25 years old. The said victim left her parents house secretly with her belongings to meet the said accused and thereafter they travelled from one place to another . The facts in the present matter suggesting that the applicant and the victim in that matter were in love, having some intimacy in between them. So far as facts of this matter are concerned, the victim is minor and the accused is old

aged person of about 40 years of age. As per their application itself he is about 45 years old person. The record is not whispering that they both were in love. On the other hand, the record prima facie suggesting that she was continuously assaulted at the hands of the applicant and unfortunately not supported by her parents and so she left her house. Fortunately she was found to the police and got protected. I, therefore, of the humble opinion that the above Judgment is not helpful and applicable to the present case.

7. Another fact is that the earlier bail application moved by the applicant was decided on merit and was rejected by the order dated 16/06/20 by this Court. Now no new ground are brought before this Court by the applicant except spread of COVID-19. But as the offence is registered u/sec.363, 376(2)(n), 506 of IPC and u/s.6 and 10 of POCSO Act for which the punishment is more than 7 years upto life, this applicant cannot get help of this ground that there is wide spread of Corona throughout the world.

8. At last in the result, considering the nature of offence, allegations made by the accused, medical papers and apprehension put up by the prosecution, the acts of the accused, so also considering the earlier order dated 16/06/20, this Court is of the opinion that the accused is not entitled to be released on bail.

8. Hence, in such circumstances and for the reasons mentioned above, this Court proceed to pass the following order :-

ORDER

Bail Application **Exhibit-6** stands rejected and disposed of accordingly.

Date : 16.09.2020

(H. C. SHENDE)
Special Judge under P.O.C.S.O. Act,
Sessions Court, Borivali Division,
Dindoshi, Goregaon, Mumbai

Dictated on : 16.09.2020
Transcribed on : 22.09.2020
Checked and corrected on : 24.09.2020
Signed on : 24.09.2020
Sent to Dept. on :

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

UPLOAD DATE
AND TIME : 24/09/20 at 10.41 a.m.

Mrs. Vidya Pendharkar
NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ H.C.SHENDE (Court Room No.12)
Date of Pronouncement of Judgment/Order	16/09/2020
Judgment/Order signed by P.O. on	24/09/2020
Judgment/Order uploaded on	24/09/2020