

**ORDER BELOW EXH-7 IN SPECIAL CASE NO.43/2023**

1. This is second application by Nikhil Babasaheb Gaikwad for bail under Section-439 of the Code of Criminal Procedure in connection with C.R.No.I-12/2023 registered with Sonai Police Station for the offence punishable under Section-376(2)(j)(n), 384, 354A, 506 of the Indian Penal Code and under Section-4, 12 of the Protection of Children from Sexual Offences Act.
2. Heard learned counsel Shri.G.D.Khiladkar for the applicant, learned Spl.P.P. Shri.M.S.Kale for the prosecution and learned advocate Shri.R.R.Pote for the informant.
3. Perused application, say and relevant documents.
4. Learned advocate for the applicant submitted that the FIR was lodged on 15.01.2023. The applicant came to be arrested on 16.01.2023. As per FIR the provisions of Section-384 of the Indian Penal Code have been added in addition to the provisions of Section-4 and 12 of the Protection of Children from Sexual Offences Act. As per FIR, the informant who is presently major, came into contact with the applicant while she was allegedly minor. There are further allegations that he had forcefully removed her clothes and committed forceful penetrative sexual assault and snapped her obscene photographs. When the informant shouted, he threatened her for life. However, there are serious flaws in the allegations which would demonstrate its falsity.
5. As per prosecution case, the first incidence had occurred on 20.04.2019 at Ghodegaon however, the informant is resident of Rahuri. She had allegedly visited the house of her grant parents in the summer holidays.

It has further alleged that after 18 days the accused went to the house of informant at Rahuri and handed over a chit to the informant. It has allegedly that in the year 2019 itself the gold ear ring weighing 9 gm were handed over to the accused. There was further allegations that again accused had threatened the informant for making her photographs viral and extorted gold ornaments from her.

6. In the entire FIR there is no incidence mentioned in between the first incidence of 2019 till the incidence of March 2022. There are contradictions in the statement of victim under Section-161 and 164 of the Code of Criminal Procedure. Even as per prosecution case, the gold was handed over to the accused in the year 2023. However, as per goldsmith the gold was sold to him on 17.10.2022 itself. Therefore, it is a totally concocted story. Even as per victim the accused asked the victim to come to Sonai in the month of March 2022. However, as per register of the lodge they visited said lodge on 11.11.2022. This falsifies the allegations mentioned in the FIR.

7. Even otherwise, the investigation has completed and charge-sheet has filed. There is alleged recovery of gold ornaments. The mobile handset which was allegedly used by the accused has already seized. In such circumstances, no purpose of prosecution is going to be served by keeping the applicant behind the bars any further. Even the victim was at the verge of majority. Therefore, the applicant may be enlarged on bail on appropriate conditions.

8. In support of his argument the learned advocate for the applicant has placed reliance on the decision in case of **Satyam Ramchandra Fulore Vs. The State of Maharashtra :2015 ALL MR (Cri) 2785.**

9. On the other hand learned Spl.P.P. submitted that the victim was minor at the time of the first alleged incidence. Therefore, though she was major at the time of lodging FIR the provisions of the Protection of Children from Sexual Offences Act would attract to the case. Total 21 *Tola* gold was extorted by the accused from the victim. Out of same only 11 *toal* gold was recovered. A recovery of remaining gold is still pending. There is possibility of pressurizing the witnesses and tampering with the evidence. Hence, the application may be rejected.

10. The learned advocate for the informant submitted that the offence is serous in nature and though the charge-sheet has filed there is possibility of further pressurizing the victim and tampering with the evidence. Hence, the application may be rejected.

11. In the present case, though the applicant has pointed out that there is variance in the averments of the informant and the statements of other witnesses like goldsmith, record of lodge however, that would be matter of trial. The alleged partial recovery of stolen articles indicate towards the guilt of the accused. However, this would be prima facie observations. Now investigation has completed and charge-sheet has filed. In such situation, no purpose of prosecution is going to be served by taking and keeping the applicant behind the bars any further. Even otherwise, rejection of bail application would amount to punishing him before conclusion of trial.

12. So far as tampering with the evidence is concerned it has submitted that the informant is resident of village Rahuri while the accused is resident of village Ghodegaon. Therefore, such possibility would be bleak. Hence, I pass following order;

**ORDER**

1. The application Exh-7 is hereby allowed.
2. Applicants/accused-Nikhil Babasaheb Gaikwad, be enlarged on P.R. bond of Rs.1,00,000/- with one or two solvent sureties in the like amount, in C.R. No.12/2023 (Special Case No.43/2023) registered with Sonai Police Station for the offence punishable under Section-376(2) (j)(n), 384, 354A, 506 of the Indian Penal Code and under Section-4, 12 of the Protection of Children from Sexual Offences Act on following conditions.
  - a) He shall not tamper the prosecution evidence.
  - b) He shall not commit any other or further offence.
  - c) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.
  - d) He shall remain present on each and every date before the court for facing trial.
  - e) He shall give documentary proof of his identification and permanent residence at the time of his furnishing surety.
  - f) He shall not leave India without previous permission of the Court.
3. Bail before concerned court.

Date : 23.03.2023

Place : Newasa

( V.Y.Jadhav )  
Special Judge, Newasa  
J.O. Code-MH02455