

ORDER BELOW EXH. 15.

1 This is the successive bail application preferred by applicant/accused u/s. 439 of The Cr.P.C. to get release on bail mainly on medical ground alongwith touching to the merits of the case. His earlier bail application came to be rejected for want of completion of investigation, more particularly the C.A. report is yet to be received pertains to the carnal sex with the victim committed by accused. Now the everything is on record, the charge sheet is before the court. Moreover, charge came to be framed against the accused vide Exh.13 on 8.2.2024.

2 It reveals from prosecution case that on 21.2.2023 victim lodged report against the accused regarding the incident took place on 18.2.2023. It is alleged in the FIR that the father of the victim was admitted in the hospital for operating his leg fracture. The accused came into contact with the victim family, as he posed himself as a doctor. In fact, he was possessing the diploma of social worker being MSW. He impressed victim family by extending helping hand to the said poor persons saying that he will arrange for the medical treatment easily and will also get free medicals for the treatment of victim's father. On the pretext of said reason, accused took the victim minor-girl alongwith him saying that he will give medical free of cost. He took the victim towards upper stair of GMC building and committed forceful carnal sex with her by gagging her mouth. The victim could not disclose it immediately due to threats given by him, but after 3-4 days she gathered courage and informed it to her mother and then report came to be lodged.

3 The accused came with the case that he is falsely implicated in this matter due to the intervention of maternal aunt of the victim

who was having some grudge against accused, as he declined the marriage proposal given by said maternal aunt. Apart from it, the investigation is now completed, the medical evidence brought on record is totally contradictory to the allegations of FIR pertains to the forceful carnal intercourse. There is no injury on any part of her body including anus. Moreover, alleged handkerchief by which accused alleged to have wiped semen stains also suggest nothing incriminating against him. Except oral words, there is no corroborative evidence to establish prima facie charge against him. Apart from the merits of the case, the accused is suffering from urinal track infection and sustaining severe pain. The jail authority referred him twice to GMCH, Nagpur for advance treatment. At present he is unable to pass the urine unless the catheter is attached. He is facing physical difficulty without any support and hence prayed for release on bail to get better treatment from private hospital.

4 This application is strongly opposed by the prosecution as well as the victim in person. It is their prayer that victim is school going girl studying in 11th Standard. Her 12th year is coming soon. If accused is released on bail, he will definitely affect the prosecution case by pressurizing the victim and her family witnesses and hence his application may kindly be rejected considering the heinous act committed by him in the premises of medical hospital.

5 Heard both the sides and gone through the record. No doubt the victim was not acquainted with the accused, he established formal relations posing himself as a doctor and under the garb of helping them by providing medicals free of cost, he took disadvantage of that situation and committed forceful carnal rape on the victim. It is true, allegations are serious one, but surprisingly the medical examination report of the victim and corresponding Chemical Analyzer report is

completely against the oral allegations of the FIR. There is nothing suggesting about the sexual violence committed by the accused by gagging her mouth. Victim was medically examined immediately after the report. There is no sign of bodily injury including her private parts(anal portion). Moreover, the seized handkerchief and other samples examined by C.A. are also in negative form. No semen or blood stains are detected on any of the seized articles. Similarly the physical examination of accused does not suggest any injury to his penis or penial section. Thus the gravity of allegations ventilated by victim is not supported with scientific evidence.

6 Apart from the merits of the case, the accused tried to demonstrate his physical ailment due to urinary track infection converted into serious ailment of kidney function which needs immediate appropriate treatment. The jail authority submitted corresponding treatment papers as called for on the application of accused. It is whispered on record that there is no adequate facility at Akola to treat the ailment of accused properly. The jail authority is facing difficulty to arrange for the guards to refer the accused to GMCH, Nagpur. On the other hand, accused submitted that he wants to get the ailment operated in private hospital. His financial condition is good to make such arrangements privately. Hence prayed for enlarge on bail.

7 The learned counsel Mr. Honale Deputy LADCS placed reliance on the observations given by Hon'ble Supreme Court in the case of *Shiv Ram Pandey .v. State of Uttar Pradesh decided on 17.5.2022*. The Hon'ble Supreme Court held that considering the aspects of matter and medical condition of petitioner/accused, petitioner deserves indulgence for grant of post-arrest bail. Similar approach is shown by Hon'ble Delhi High Court in the bail matter of

Vijay Agrawal through Parokar .v. Directorate of Enforcement decided on 13.12.2022, in which it is held that howsoever serious the offence may be, the health condition of a human being is paramount. The custody during the period of investigation cannot be termed to be punitive in nature. The health concern of a person in custody has to be taken care of by the State and keenly watched by the judiciary. Every person has a right to get himself adequately and effectively medically treated. Article 21 of the Constitution not only gives a fundamental right to live but the right to live with dignity. Right to live a healthy life is also one of the facets of his fundamental rights. On the contrary, learned Spl.PP. Sau. Sheetal Bhutada submitted that victim is appearing for her 12th class in next curricular year. She is attending her college from village Ridhora to Akola. If the accused is released, then there is every possibility of threatening the prosecution witnesses.

8 On perusal of record it reveals that accused is resident of Jalgaon Jamod District Buldhana which is far away from the native place Ridhora of the victim-family. The accused can be directed not to enter into the native village of victim till the evidence is over. It is already observed above that medical evidence brought on record by the victim pertains to her case is contrary to the allegations. Penetrative sexual assault is not indicated in the medical papers. Hence in view of the observations by our Hon'ble High Court in the bail application of ***Shaikh Fazal Shaikh Ashfaq .v. The State of Maharashtra decided on 28.9.2022***, the applicant/accused appears to have made out case for grant of bail. The grounds mentioned to get release on bail needs serious consideration. The physical appearance of the accused before the court was suggestive that he is facing difficulty to move properly with catheter and pain was reflecting on his face. The corresponding medical papers are corroborative to it.

Therefore because of the medical ground demonstrated by learned counsel and the poor health condition of accused, it appeals to my mind that he is liable to be released from jail, as investigation is completed. Moreover, if the stringent condition is imposed regarding the well founded apprehension shown by the prosecution, it will meet the ends of justice. Hence the following order.

Order

- 1 Application for grant of bail is hereby allowed.
- 2 The applicant/accused Prakash Pralhad Wankhade be released on bail in crime no. 39/2023 registered with Police Station City Kotwali, Akola for the offence punishable u/s. 376, 377, 170, 506 of The Indian Penal Code r/w. section 4 of The Protection of Children from Sexual Offences Act, 2012, on furnishing solvent surety of Rs.25,000/- (Rs. Twenty Thousand only) alongwith personal bond of like amount.
- 3 The accused is directed not to enter into the village Ridhora Tq. Balapur, District Akola till the conclusion of trial and he should refrain himself from pressurizing the prosecution witnesses in any manner.
- 4 Surety be furnished before this court, accordingly.
- 5 Inform concerned police station and jail authority, accordingly.

Date : 06.03.2024

Sd/-
(S.P. Gogarkar)
Extra Jt. District Judge and
Addl. Sessions Judge, Akola.

<u>AFFIRMATION</u>			
I affirm that the contents of this P. D. F. are in verbatim as per original order.			
1	Name of the Steno	:	A.H. Barve

2	Court Name	:	Extra Jt. District Judge and Addl. Sessions Judge, Akola
3	Date	:	06.03.2024
4	Signed by P.O. on	:	06.03.2024
5	Uploaded on	:	06.03.2024