

MHAM190027312023



IN THE COURT OF ADDITIONAL SESSIONS JUDGE-1, WARUD,
(Presided over by A.A. Panchbhai)

ORDER BELOW EXH.06 IN SPECIAL CASE NO. 230/2023

01] This is a successive bail application, but orally submitted about it and there is no specific mention that what number of regular bail applications were preferred earlier. It is pertinent to note here that the offences are punishable under Section 376(3), 375(2)(n), 452, 324-A, 354-D of Indian Penal Code and under Section 6 and 12 of the POCSO Act, 2012.

The brief facts of the prosecution's case are as follows :-

02] That, the victim child and the accused person are resident of same village. That the birth date of the victim child is 09/08/2007 . That she is studying in class 11th and accused person is 35 years of age and he is married person. That, last year wife of accused has died and after 15 days of the death of his wife, the accused person came to the house of victim child, promised her to marry and committed sexual intercourse. That the accused has also threatened to the victim child that if she did not allow for sexual intercourse to him, he would injure himself, and then he had committed sexual intercourse with the said child repeatedly. That due to threat given by the accused the victim

child had not narrated the atrocities to her parents, and she became pregnant. That on 30/10/2023 Dr. Pandharikar had declared that she was pregnant of eight months and on next date the victim lodged report against the accused person at police station Shirkhed.

03] The Investigating Officer filed his say surprisingly even when charge sheet is filed, and it is at Exh. 6/4 and resisted the application. Heard Ld. APP and the Ld. Counsel for the accused person at length.

Submissions :-

04] It is argued on behalf of accused person by his counsel, that the investigating officer has never followed the constitutional directions. He had not mentioned the ground of arrest or justified arrest and therefore arrest of the accused is illegal.

05] On the other hand, the learned A.P.P. has argued, that there is likelihood of committal of offence of similar kind and there is threatening to life of complainant/ victim and other witnesses, and accused person is likely to flee justice. That there is likelihood of tampering of the evidence and hence application be rejected.

Reasons and Analysis :-

06] The accused person counsel had relied on the authority of Pabir Purkayastha ..vs.. State of Delhi, reported in AIR 2024 S.C. 2947, in which, it is held that “the copy of the remand application in the purported exercise of communication of the grounds of arrest in writing was not provided to the accused appellant or his counsel

before passing of the order of remand, which vitiates the arrest and subsequent remand of the appellant”. Accordingly the accused was released from the custody. The authority is now a trite law and in this back drop it will be required to see whether there is compliance of such directions during remand. It appears that the remand application and remand orders are annexed with the charge sheet, and the first remand application was there on 01/11/2023 and he was sent to PCR that day. Though my learned predecessor had failed to observe that there was such compliance of the statutory duties by the police in this regard, the application itself suggests that notice was given as per Section 50(1) of Criminal Procedure Code, and there is a signature of the accused person about understanding been given i.e. informing him about his arrest etc. His relatives name is also there i.e. Ankush Tekam, to him also the said arrest was communicated. His signature is also there, and therefore grounds of arrest in writing were provided to the accused person and his relatives. So there is sufficient compliance been made by the police at the time of remand, though not recorded by the concerned authority. Therefore, though the case law is applicable, there are no grounds to consider the arrest as illegal.

07] As far as the second part is concerned, there are no changes in the circumstances. Filing of charge sheet itself cannot be said as a change in circumstances. There is no change in the nature of allegations against the accused person in the charge sheet filed against the accused person. There is medical examination report of the victim, the obstetrics report is there, that the victim was pregnant. The age of the victim is about 15 years 6 months old at the time of offence. There

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Order below Exh.6 in
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is a prima-facie case that the accused has committed sexual intercourse by giving threats to the victim child. There is a huge age difference between the victim and the accused who is a married person. Therefore, there is also likelihood that the accused person can pressurize the victim child and other witnesses. Considering the facts that there are no changes in circumstances, the earlier bail application been rejected on merits and further there are no other grounds, the grounds of justifying the arrest are present, and given to the applicant and relatives, the arrest does not appear to be illegal. Hence the bail application is not justified and it is hereby rejected. Therefore, following final order is passed as under :-

ORDER

The bail application is hereby rejected.

Date : 24/06/2025.

(A.A. Panchbhai)
Addl. Sessions Judge-1, Warud.