

Vaijapur P.S.

Sessions Case No.66/2021
State of Maharashtra Vs. Sunil Gorakh Battise
(ORDER BELOW EXH.-4)
CNR No.MHAU040009362021

01. This is a second application Exh.4 moved by the applicant/accused Sunil Gorakh Battise under section 439 of the Code of Criminal Procedure for enlarging him on bail in Crime No.323/2021 of Police Station Vaijapur for the offence punishable under Sections 363, 366, 376(2)(N) of the Indian Penal Code and Section 3 and 4 of POCSO Act, 2012.

02. Perused the grounds raised in the application and say filed by the investigating officer at Exh.-05.

03. Heard learned Advocate Peerzada R.A. for the applicant/accused and learned A.P.P. Shri. N.S. Jagtap for the State.

04. It is the case of the prosecution that on 03.08.2021 mother of victim reported the matter to police station Vaijapur that her minor daughter is missing and after due search also she could not be found therefore she reported the matter. During the investigation on 17.09.2021 victim approached to police and

her statement was recorded by police. On the basis of said statement present offence came to be registered.

05. The learned APP opposed the application on the ground that, there is prima-facie case against the present applicant/accused. The victim is 16 years old minor girl and she is pregnant from the present applicant/accused. If present applicant/accused released on bail he will tamper with the prosecution evidence. Also submitted that, I.O. intending to get D.N.A. test. Hence, prayed to reject the application.

06. It is submitted on behalf of applicant/accused that victim is more than 18 years old and as per the Adhar Card her date of birth is 15.02.2003 in support of his contention he placed on record copy of said Adhar Card. On perusal of said document it appears that said date of birth is mentioned on the basis of declaration only. On the other hand, as per the police papers in school record her date of birth is 20.10.2005 therefore at this stage the document maintained by the school appears to be authentic document and as per school record on the date of incident victim was 16 years old girl. As per the statement of

victim she is pregnant from the applicant/accused. Victim stated in her statement dated 17.09.2021 that, she was having love affairs with the accused and on 15.02.2021 in a temple she performed marriage with accused and she become pregnant from him.

07. Admittedly, the earlier application filed by applicant/accused was rejected on the ground that investigation is in progress and charge-sheet has not been filed. Now, after completion of investigation also charge-sheet came to be filed and victim in her statement under section 164 of Cr.P.C. categorically deposed that, accused is her husband and on 15.03.2021 they performed marriage at Ganpati temple Shivrai. It is admitted fact that, now victim delivered a child from the accused.

08. On that point the Hon'ble Bombay High Court in a reported case reported in **2016 ALL MR (Cri.) 1712, Sunil Mahadev Patil Vs. The State of Maharashtra**. Held and observed that, "*Criminal P.C. (1973), S. 439--- Penal Code (1860), Ss.376, 363, 366A – Bail -- Grant of – Kidnapping*

abduction and rape case--- Prosecutrix is 15 years old and accused is 20 years old--- Statement of Prosecutrix and witnesses showing that they were in love with each other, so they eloped and went to temple-- There they garlanded each other and according to them performed marriage and thereafter they started residing together in house of their relative – In view of so many mitigating factors, bail granted to accused on certain conditions.”

09. Also in a reported case reported in **2015 ALL MR (Cri) 250, Mahesh Bhimraj Jadhav Vs. The State of Maharashtra**. It was held and observed by Hon'ble Bombay High Court that, *“Criminal P.C. (1973), S.437 – Penal Code (1860), S.376-- Bail – Grant of -- Rape case-- Charge-sheet has been filed and statement of prosecutrix has been recorded -- Accused has been in custody since date of his arrest – Hence, needs to be enlarged on bail.”*

10. Therefore, considering the observation of Hon'ble High Court in the light of fact and circumstances of the present matter I think no purpose will be served to keep the applicant/accused behind the bar. The apprehension of

prosecution can be addressed by imposing necessary condition.

Hence I proceed to pass the following order.

ORDER

01. The application Exh.4 is hereby allowed.
02. The applicant/accused Sunil Gorakh Battise involved in a Crime No. I-323/2021 of Police Station Vaijapur for the offence punishable under sections 363, 366, 376(2)(N) of the Indian Penal Code and Section 3 and 4 of POCSO Act, 2012 be released on bail on his executing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with two sureties in the like amount.
03. The applicant/accused is further directed to submit a list of at least three blood relatives with their detail residential addresses and also the addresses of their place of work with documentary proof of showing the correctness of the details produced by them.
04. The applicant/accused is also directed that he and his sureties should submit copies of at least two documents amongst their respective Passport, Pan Card, Bank Passbook, Credit Card with photograph, Ration Card, Adhar Card, Electricity Bill, Landline telephone bill, Voter I.D. Card issued by the Election Commission of India and Property Tax Register while furnishing the bail.
05. The applicants/accused shall not tamper with the prosecution evidence in any manner and shall not indulge in any type of criminal activity. If it is noticed that he involved in such type of offence the prosecution will be at liberty to move for cancellation for bail.
06. The applicant/accused shall co-operate the I.O. for investigation purpose and shall attained the police station whenever called by I.O. issuing written intimation.

07. The applicant/accused shall not change the place of residence without prior intimation to the concerned police station.
08. Any observation made in this order is made only for limited purpose of deciding this bail application and it shall not come in the way of trial during the trial.

Dt.17/12/2021.

Sd/-
(M. Mohiuddin M.A.)
Additional Sessions Judge-1,
Vaijapur.

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	: Dehade R.B.
Court	: Addl Sessions Judge, Vaijapur.
Date	: 17.12.2021
Judgment signed by the presiding officer on	: 17.12.2021
Judgment uploaded on	: 17.12.2021