

IN THE COURT OF SPECIAL (POCSO) JUDGE, BEED

Special (POCSO) Case No. 75/2023

State Vs. Shaikh Maruf

(CNR No : MHBI0100021092023)

Order Below Exh. 7

01. Vide order dated 18.04.2023 passed by Ld. Additional Session Judge, Beed in CriBA No. 326/2023 (Shaikh Maruf Vs. State), applicant Shaikh Maruf has been granted bail in connection with CR No. 51/2023 registered in Neknoor Police Station for the offences of PUS 354, 354A, 354D and 506 r.w. 34 of IPC and PUS 12 of POCSO Act. Said order is perused.

02. While granting above bail, few conditions were imposed, two of which mentioned in Clauses 3 and 5 were that -

3. The applicants shall not enter the territorial boundary of the Neknoor village till the evidence of the victim child and material prosecution witnesses is recorded.

5. The applicant shall attend the Shivajinagar Police Station, Beed on each and every date in between 03-00 to 06-00 PM till the filing of the charge-sheet and thereafter, on each Thursday and Sunday during the aforesaid period, till the evidence of the victim child and material witnesses is recorded.

03. Now, the applicant wants relaxation of above two conditions. Perused application; say filed by Prosecution; and say filed by victim.

04. As per Shri. A. P. Gandle, Ld. Advocate for applicant -

- a. Charge-sheet has been filed. Accused has observed every condition. Till date, he has not contacted with any witness.
- b. He is 22 years old student. Because of ban on entry in Neknoor, he has to spend a lot for lodging and boarding outside.
- c. If conditions are not relaxed, it would amount to literally punishing the accused before proving the alleged crime. Application needs to be allowed.

05. According to Shri. Azhar Ali, Ld. Advocate for victim -

- a. Till today, evidence has not been recorded. Before it, how conditions could be relaxed can't be understood.
- b. Let the evidence of victim be recorded. Victim is strongly opposing for relaxation of conditions.

06. Shri. A. D. Rakh, Ld. PP for the State submitted thus.

- a. Looking to the high possibility of tampering, conditions have been imposed. Accused is in dominating position.
- b. POCSO Act speaks about safety of victim. Prosecution is ready to conduct the trial. It is for the accused to enable the conducting of the trial.
- c. At least till examination of witnesses except Police

Personnel, conditions should not be relaxed. Application needs to be rejected.

07. Question is whether or not conditions could be relaxed for as prayed. I answer this point partly in the affirmative.

08. Perusal of bail order referred above especially paragraphs 2 and 3 are specifying the nature of accusations. As per record, accused was arrested on 26.03.2023 whereas bail order has been passed on 18.04.2023.

09. Safety of victim is the view point from one side. Equally, the punitive potential of conditions imposed before holding the accused guilty of crime is taken into consideration. Leading the life by 16 years old victim in fearless manner is one angle. Similarly, the argument in respect of troubles faced by accused because of conditions is also taken into consideration. Attempt is made to strike the appropriate balance between these two.

10. Having given thoughtful consideration to above aspects, I hold that condition No. 5 of attending the Shivaji Nagar Police Station could be relaxed forthwith. However, third condition of non-entering in Neknoor till the examination of victim and material Prosecution witnesses couldn't be diluted wholly. I hold that till the examination of victim, the ban should remain intact. Thus, fifth condition could be diluted to some extent. As such, point is decided partly in the affirmative.

11. In the result, following order is passed.

ORDER

- A.** Application (Exh. 7) is allowed in part.
- B.** Original condition mentioned in Clause 5 in order dated 18.04.2023 passed in CriBA No. 326/2023 (Shaikh Maruf Vs. State) is totally relaxed with immediate effect.
- C.** Original condition mentioned in Clause 3 in order dated 18.04.2023 passed in CriBA No. 326/2023 (Shaikh Maruf Vs. State) is partly relaxed. Said original condition is replaced with following one.
- “3. The applicant shall not enter the territorial boundary of the Neknoor village till the evidence of the victim child only is recorded”.**
- D.** Except above relaxation, rest conditions in the order shall remain intact.

Date : 05.09.2023

(R.S.Patil)
Special (POCSO) Judge
Beed

:: CERTIFICATE ::

“I affirm that the contents of this PDF file Judgment/Order are same word to word as per original Judgment/order”.

- (a) Name of the Stenographer : Omkar K Joshi (Steno Grade-III)
- (b) Court :- Dist. Judge-4 & Addl. Sessions Judge, Beed.
- (c) Judgment/Order signed by PO on : 05.09.2023
- (d) Judgment/Order uploaded on : 05.09.2023