

MHBI010024902023



Spl (POCSO) Case No. 106/2023
State of Maharashtra
Vs.
Akash @ Akshay Nanath Gaikwad,

ORDER BELOW EXH.7

The accused is being prosecuted by Police Station Ashti, Dist, Beed, in Crime No. 197/2023 for the offence punishable under section 354, 354-A, 354-D, 305 of the Indian Penal Code and under sections 8 and 12 of the Protection of Children from Sexual Offences Ac, 2012.

2. The accused was arrested on 17.05.2023. He was produced before the Special Court on 18.05.2023 and since then he is in jail. Charge-sheet is filed on 11.07.2023. Accused had preferred Misc. Cri. Application No. 490/2023 for granting bail before the Special Court at Beed. His bail application was rejected on 14.06.2023. Thereafter, accused filed regular bail application before Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad vide Bail Application No. 1059/2023. The said application was withdrawn with a liberty to file fresh bail application before the concerned Court and hence this application.

3. As per the case of the prosecution the victim was 15 years of age. On 14.05.2023 at 11.00 a.m. the parents of the victim had gone to their field. Victim along with her 3 younger sisters and one younger

(2)

brother was at home. At around 03.30 p.m. the younger sister of the victim went to her mother and informed that victim had committed suicide by hanging. The mother of the informant came to the house and saw that the victim had committed suicide by hanging at there house. Victim was taken to the hospital, wherein she was declared dead. Inquest panchnama and Post Mortem was conducted. According to Post Mortem Notes, the deceased died due to hanging. Spot panchnama was conducted. As per Birth Certificate, the victim was born on 25.04.2008 and was 15 years of age. The complaint was given against the accused on 15.05.2023.

4. Learned Counsel for the accused submitted that the first report was given immediately after the incident on 14.05.2023, wherein the father of the victim has not raised suspicion on anyone and had submitted that he had no complaint. Thereafter, the complaint was filed on 15.05.2023, which is filed on the basis of the statements of two minor sisters of victim. In the complaint it is stated that the accused came to the house of victim on 13.05.2023 in the afternoon. He was talking to victim. He gave them money to buy sweet and asked them not to come home early. When they returned, they saw the victim was crying. Minor witnesses further stated that accused had molested the victim, due to this reason, the victim had committed suicide. Learned Counsel further submitted that in the statements of minor sisters of the victim they stated that the accused used to come to their house daily. He relied upon the contradictions in the complaint and the statement regarding visits of the accused. It was further contended that the accused had not abetted the suicide. There is delay in filing the complaint. Learned Counsel relied upon the statement of witness Vijay Asaram Jagtap, who was shop-owner. It was further submitted that accused is having a tractor, which is hired for transportation of sugarcane. It was submitted that the accused is falsely implicated in

this case and on 14.05.2023 the accused was at Pune. He is married person and sole bread-earner and prayed to allow the application.

5. Learned DGP Shri A. D. Rakh for the State submitted that the incident was not disclosed on 14.05.2023 when the complaint was given. The incident was disclosed thereafter and hence the complaint was given against the accused on 15.05.2023. Witnesses are of tender age. Accused is habitual offender. There is no previous enmity. The accused and informant are relatives. The accused may tamper with the evidence, if bail is granted. Instead of it learned DGP prayed to expedite the matter and prayed to reject the application.

6. On hearing both the side, following points arise for my determination and I have recorded my finding thereon with reasons as under;

<u>POINTS</u>	<u>FINDINGS</u>
1] Whether applicant/accused is entitled for getting regular bail ?	... No.
2] What order ?	... As per final order.

REASONS

AS TO POINT No. 1 :-

7. Upon considering the hearing and the material on record, prima facie it is evident that on 13.05.2023 the accused had gone to the house of the victim in the afternoon, when the parents were already gone to the field. As per the statements of the child witnesses, the accused gave them money to buy sweet and asked them not to come early. On their return the victim was noticed crying by these witnesses and on being asked victim told that accused had pulled her towards him and had kissed her. The victim had committed suicide on next day. In the previous complaint, that was given immediately after the incident,

(4)

informant had stated that he does not know the reason for suicide and he has no complaint against anyone. The statements of the child witnesses were recorded on the next day of the incident and it is evident that when the offence was disclosed, the informant filed the complaint against the accused.

8. In this case victim, as per her Birth Certificate, was born on 25.04.2008. Incident happened on 14.05.2023. Victim was minor girl of 15 year. Accused is there close relative and he is married. There is no previous enmity between the informant and the accused. Accused is being tried for the offence punishable under section 305 of the Indian Penal Code, wherein punishment prescribed is with death or imprisonment of life or imprisonment for a term not exceeding 10 years.

9. As observed earlier, the victim and the accused are relatives. They are living in the same village and locality. There is apprehension that the accused may tamper with the evidence. Considering the seriousness of the offence and material on record, the accused cannot be granted bail. Hence, considering this, I answer point No.1 in negative.

AS TO POINT No.2.

10. The accused is not entitled for grant of bail. I, therefore, proceed to pass the following order;

ORDER

Application at Exh.7 stands rejected.

Beed,
Date : 04/08/2023.

(Anand L. Yawalkar)
SPL. & SESSIONS JUDGE,
BEED.

(5) Spl. (POCSO) Case No. 106/2023
ORDER BELOW EXH.7

Dictated on : 04.08.2023
Transcribed on: 04.08.2023
Checked & signed on : 07.08.2023

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

Name of Steno : K. B. Joshi,
Name of Court : Sessions Court,Beed,

Sd/-
(K. B.Joshi)
Stenographer Grade-I