



ORDER BELOW EXH. 3

This is an application filed under Section 439 of Cr.P.C. by applicant Sushil Janak Nanawte in Crime No. 297/2022 for offence punishable under Section 363, 366, 376(2)(n) of IPC, Section 4, 6 of POCSO Act with Dharur Police Station.

2. Brief facts of the case are that on on 18.12.2022 informant along-with his wife had gone to cast vote during Grampanchayat election of Tandalwadi. In the evening at about 7.30 p.m. victim age 13 years 11 months had gone to the shop and after return, was standing the outside the house. At that time accused was also standing outside the house. Taking opportunity the accused enticed the victim and and her away. Informant searched the victim, he could not find the victim. Therefore he filed missing complaint to the police. In pursuance of the complaint crime No. 297/2022 came to be registered in Dharur police station.

3. In pursuance of the investigation of crime, on 20.07.2023 informant received message from Dharur police station that victim was found in company of accused at Washere Karvande, Tq. Khed, Dist. Pune. Informant initially came to police station. On inquiry to the victim she narrated that victim and accused used to speak on mobile phone

and since last 1½ year they had friendship which later developed into love affair. The affair of victim and accused was noticed by parents of victim and therefore parents of victim were trying to fix marriage of victim and thereafter they decided to elope. Victim further stated that she and accused decided to elope. Taking the advantage of Grampanchayat election the victim and accused eloped from the house. Victim first went towards the lake behind the house and thereafter accused followed her. The victim and the accused spent their night in the farm of Aawargaon. In morning they went to Dharur to Telgaon to Beed to Shikrapur to Chakan and thereafter at Washere Karvande Karvande. At Washere Karvande, victim and accused resided in small room beside the house of friend of accused named Rahul Gabaji Karvande. During the stay at that place, accused had multiple episode of sexual intercourse with the victim.

4. Thereafter, charge against the accused were altered and enhanced. Accused was arrested, remanded to police custody and judicial custody. After investigation charge-sheet came to be filed.

5. It is submitted that victim being 13 years 11 months had sufficient understanding. She in a statement has specifically stated that she was in love affair with accused. It is further found from her statement that victim and the accused decided to elope, therefore, it cannot be said that the accused intentionally enticed and took away victim from the custody of her parents. It is further noticed from the statement that victim has specifically stated that she by herself went to

Washere Karvande, Tq. Khed, Dist. Pune and she at that place did not resist the accused nor raise any alarm nor filed any complaint and did not communicate anyone. This shows victim was participant for the alleged sexual act. After the victim was brought to Dharur police station she was medically examined. Subsequently, statement of victim was recorded under Section 164 of Cr.P.C. During the statement before Magistrate, victim was negated the allegations of prosecution. Thus, the applicant / accused who is in jail since 21.07.2023 is nor required to be detained any longer. Hence, prayed to grant bail. Advocate for applicant relied on following judgments.

1. Rajkumar Uttam Padvi Vs State of Maharashtra & another [Bail Application No. 890 of 2021 decided on 12th October, 2021]

2. Sunil Mahadev Patil Vs The State of Maharashtra [Bail Application No. 1036 of 2015, decided on 03rd August, 2015]

6. APP and IO was called to object the application. APP filed reply at Exh. 5. During the hearing of application, victim was present in the court room along-with APP. APP submitted that victim is only 13 years of age and she has no sufficient understanding about consequence. Medical report is very specific that victim was subjected to penetrative sexual assault. Victim during statement before police has specifically mentioned about the penetrative sexual assault committed by accused. If accused is released on bail he may tamper the prosecution witnesses and evidence and also cause threat to the victim. Releasing the accused would not be justifiable. Hence, prayed to reject the application.

7. The judgments relied by the applicant are specifically indicating on the fact the victim has sufficient understanding and capability of understanding of the consequence of the act. In both the cases the victim were 16 years or less by age. Therefore, in view of the judgment relied by applicant, it is necessary to find out whether victim had sufficient understanding about the consequences of the act.

8. Perusal of statement of victim, she stated before police that she and accused were friend for 1½ years prior to the incident and also had developed love affair. She further stated that her parents had come to know about love affair between victim and the accused therefore parents of the victim were trying to fix the marriage of victim and thus it is stated by victim she and accused decided to elope. That, since 18.12.2022 till 20.07.2023 though is more than 7 months, victim and accused stayed together. During the said period victim did not raise any complaint or did not resist the accused. The victim in her statement stated that when they decided to elope she first went towards lake and subsequently accused followed her and thereafter they went to Dharur, Telgaon to Beed to Shikrapur to Chakan and thereafter at Washere Karvande. At Washere Karvande, victim and the accused stayed there for continuous period of about 7 months. This shows the victim had developed sufficient understanding about the consequences. During statement before Magistrate under Section 164 of Cr.P.C., victim declined to state the fact as stated by her before police. On perusal of the statement before Magistrate, it is found that she herself had left the company of her parents and did not forcibly had sexual intercourse. It is

a fact that consent of minor cannot be considered legal but the facts and circumstances shows that the accused at this stage is not required to be detained. Detention of accused shall be unnecessarily incarceration pending the trial. Therefore, I find that accused is required to be release don fail on stringent condition. Accordingly, I pass the following order.

ORDER

1. Application is allowed.
2. Applicant / accused Sushil Janak Nanawte in Crime No. 297/2022 registered with Dharur Police Station shall be released on bail on executing his PR of Rs. 50,000/- (Rs. Fifty thousand only) with one or more surety in the like amount.
3. He is hereby directed not to threaten or tamper with any prosecution witnesses in any manner and shall not commit any other offence and shall attend the trial court on every fixed date except with permission of the court.
4. Breach of the any of the conditions shall entail cancellation of bail.

Date : 10.11.2023.
Place: Kaji.

Sd/-
(K. D. Jadhav)
Addl. Sessions Judge, Kaij

CERTIFICATE

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

Sd/-
(A.V.Tidke)
Steno

Dictated On : 10.11.2023
Transcribed on : 10.11.2023
Checked & signed on : 10.11.2023