

MHBU010014992022



IN THE COURT OF ADDITIONAL SESSIONS JUDGE, BULDANA

SPECIAL CASE NO. 50 OF 2022

Sajid Shaha Sadik Shaha,
Age-28 years, Occ.Labour,
R/o Pimpalgaon Sarai,
Tq.Dist.Buldana ... Applicant

..Versus..

State of Maharashtra
Through D.G.P.Buldana,
Through PSO Raipur ... Non-applicant

ORDER BELOW EXH.6

(Passed on this 1st day of February 2023)

1] Instant bail application has been filed by applicant under Section 439 of Criminal Procedure Code for grant of regular bail inter-alia contending that Police Station Officer, Raipur has registered crime bearing Crime No.220/2022 relating to the offences punishable under Sections 363,366-A,376(2)(j)(n),376(3) of the Indian Penal Code and Sections 4,6,8,10 and 12 of the POCSO Act and Sections 3(1)(w)(i)(ii), 3(2)(v)(va) of the S.C.S.T.(Prevention of Atrocities) Act,1989.

2] In brief, prosecution has alleged that first informant is resident of Morandi Mohalla, Old Jalna, at present resident of "Sailani". He lodged his report to the police station Raipur on 12.9.2022 alleging that he is having one minor daughter(victim). On 3.9.2022 at about 1.30

p.m., he noticed that victim was not present in his house. Thereafter, he took search. But he did not find victim. He also made inquiry with villagers and relatives. But he did not find victim. Consequently, he lodged his report to the police station about missing of victim who was 14 years 7 months old. On the basis of said report, crime was registered in above-stated manner and investigation was started.

3] During course of investigation, it is transpired that present applicant had kidnapped minor victim and thereafter committed sexual intercourse with her repeatedly, despite knowing that she was minor. In view of this, provisions relating to committing of rape (Section 376 IPC) has been added in above-mentioned crime, inasmuch as initially, crime was registered only relating to offence of Section 363 of IPC. In such circumstances, applicant was arrested on 7.10.2022. Now, he is in magisterial custody.

4] Applicant has denied all the allegations made against him. He is claiming to be innocent one. Nothing has been recovered from applicant. No prima facie case has been made out against applicant for alleged offences. Applicant has been falsely implicated in present crime. There are no grounds so as to reject the bail application. In case, regular bail is granted, he will not misuse the bail and abide the conditions. On the basis of these grounds, lastly, it is prayed for allowing his bail application.

5] Learned Public Prosecutor Shri Bhatkar has filed his say vide

Exh.8 and thereby opposed bail application inter-alia contending that allegations made against applicant are serious one. He is involved in the offence of kidnapping and committing rape on minor girl repeatedly. Furthermore, minor girl is belonging to Scheduled Caste, inasmuch as she is belonging to 'Matang' caste. Investigation has not been completed and same is in progress. In such circumstances, if bail application is granted, then applicant will misuse the bail and will create hurdle in the trial. Lastly, it is prayed for rejecting bail application.

6] First informant has also filed his say vide **Exh.11** and he also reiterated the fact that applicant had kidnapped his minor daughter victim and thereafter, he committed rape on her. Applicant and his relatives have threatened to kill him. Applicant is having man power. In such circumstance, if bail is granted to applicant, then he will misuse the same. Due to threatening given by applicant, his and his family members' life came in danger. Lastly, it is requested for rejecting bail application.

7] Victim has filed say vide Exh.10. She has given “no objection” for releasing accused on bail.

8] I have heard learned Counsel Shri Kale for applicant and learned Public Prosecutor Shri Bhatkar. Learned Counsel of applicant submitted that victim had left home at her own accord. No force or inducement has been applied by applicant. I have also heard first informant and victim. Learned Counsel of applicant has placed his reliance on following judgments-

A] Rajkumar Shahir Khandekar Vs. The State of Maharashtra & Anr, Criminal Appeal No. 267 of 2020, decided by Hon'ble Bombay High Court on 28.7.2020.

B] Anirudha Radheshyam Yadav Vs. The State of Maharashtra, 2020 ALL MR (Cri) 1351. It was the case relating to offence punishable under Sections 4,6 and 8 of POCSO Act and age of victim was 14 years 11 months on the day of incident. Relevant para No.4 is re-produced as under-

*“4. So far as the offences punishable under Sections 4,6,8 of POCSO Act (special law) is concerned, it may be stated that the provisions of this law are, though, stringent in nature, would not deter the Court to grant or refuse bail in order to secure the ends of justice. **The conduct of the victim is indicative of the fact that she had left the home of her parents by her own will and that she had surrendered to the physical desires of the applicant out of her love and affection for him.** It is not the case of the prosecution that the applicant had promised to marry her. Additionally, it is also not a case where under the misconception of the fact, she had served herself to the desire of the applicant for physical relations. No doubt, that the applicant, under the preview of POCSO Act, is a minor, however, the facts of the present case indicate that she had sufficient knowledge and capacity to now full import of what she was doing and had only thereafter voluntarily joined the complainant.”*

Lastly, regular bail was granted to applicant by Hon'ble High Court.

C] Sunil Mahadev Patil Vs. The State of Maharashtra, Bail Application No.1036 of 2015, decided by Hon'ble Bombay High

Court on 3.8.2015. Relevant para No.13 is re-produced as under-

“13. In the present case, the prosecutrix is 15 years old and the accused is 20 years old. It appears from the record, statement of the prosecutrix and witnesses that they were in love with each other, so they eloped and went to the temple. There they garlanded each other and according to them, they performed marriage and thereafter they started residing together in the house of their relative. In between prosecutrix called her distant aunt and requested her to make arrangement of some money and she disclosed that she is married and wants to stay with applicant/accused. In this case, there are many mitigating factors. Under such circumstances, I am inclined to grant bail to the applicant/accused on the following terms and conditions.”

Lastly, conditional bail was granted.

8] Admittedly, in case in hand, accused Sajid Shaha has been arrested on 7.10.2022. There is no dispute that charge-sheet has been already submitted in the Court and investigation has been completed. Applicant is resident of Pimpalgaon Sarai, Tq.Dist. Buldana. Prosecution has not stated in their say Exh.8 that applicant is habitual offender and his antecedent is not clear. In such circumstance, it appears that there are least chances of his absconding. Say of victim reveals that she has “no objection”, in case, applicant is released on bail. From this, it is clear that she has no apprehension from accused about pressurizing her. In such situation, no purpose will be served by detaining applicant behind the bar for further period. Applicant appears to be 28 years young boy. In such scenario, if regular bail is granted, then it may not

prejudice to the prosecution. As such, according to me, applicant is entitled to be released on bail. In the result, following order is passed.

ORDER

- 1] Bail application (Exh.6) is allowed.
- 2] Applicant Sajid Shaha Sadik Shaha be released on execution of P.R. Bond of Rs.20,000/- with one surety in like amount, in Crime No.220/2022 registered with Police Station, Raipur on following conditions;
 - A] Applicant shall not misuse the bail.
 - B] He shall not contact victim or prosecution witnesses.
 - C] He shall not enter into premises of victim.
 - D] He shall not create any hurdle in the progress of trial.

Buldana
Date:1.2.2023

(R.N.Mehare)
Addl.Sessions Judge,
Buldana

Certificate

“I affirm that, the contents of this PDF file judgment are same word for word as per original judgment.”

Name of Steno : D.V.Matre, Stenographer, Grade 1,

Name of Court : District Judge-1 & ASJ, Buldana,

Date of judgment/order : 1.2.2023

Judgment/order uploaded on : 1.2.2023