

MHBU040010882016



Order below Exh.165
(Passed on 24.9.2024)

1. This is the third bail application preferred by applicant/accused Ittusing Kalusing Pawar, u/s 439 of the Criminal Procedure Code, for regular bail, in connection with Crime No.202/2016 registered with police station Hiwarkhed, Tq. Khamgaon for the offences punishable under Sections 376(2)(f)(l)(n), 109 of the Indian Penal Code, under Sections 6, 17 and 21 of the Protection of Children From Sexual Offences Act and under Section 75 of Juvenile Justice (Care & Protection of Children) Act.

2. Learned APP Mr.PT.Lahudkar has resisted the application by filing say below Exh.169. It is contended that accused has committed very serious and heinous offence. He is the main accused who played active role in this case. It is further contended that now the matter is posted for evidence, the prosecution has examined two witnesses i.e. informant, victim and panch witness. The prosecution has to examine material witnesses who are closely related to the incident in question and other two victim who are also the witnesses in the said matter. The accused is facing three trials in this Court and he has committed

sexual assault upon various victim. It is further contended that if the accused is released on bail then he may tamper the remaining witnesses of the prosecution. Hence, requested to reject the application.

3. Notice was issued to the victim two-three times, could not be traced out as per the police report. Hence, this application proceeds without the say of victim.

4. Learned Advocate Mr.S.W.Kolhe, on behalf of applicant/accused has submitted that since childhood the applicant is visually impaired person having eyesight less than 50% that too during day time. It is further submitted that during night time and whenever, there is darkness the applicant is totally blind. He cannot even move without escort. Because of the physical disability the applicant has no employment. He is resident of Umra, Tq.Khamgaon and law abiding person. He has been arrested in this Crime on 3.11.2018. It is further submitted that Nana Kokre and his family members offered some petty work during day time to the applicant and offered some money along with expense of escort. The investigation is completed and now the charge sheet has been filed. The evidence of victim has been completed. Under such circumstances no purpose would be served keeping him behind the bar. He submitted that applicant/accused is ready to abide by all the terms and conditions of bail if he released on bail. Considering all these aspects, prayed for releasing the applicant/accused on regular bail.

Learned advocate for applicant/accused has relied upon the authority- **Akash Satish Chandalia V/s. The State of Maharashtra, Criminal Bail Application No.1779 of 2023**, in which the Hon'ble Bombay High Court held that “ long incarceration of an accused as under-trial prisoner also deserve its due weightage. Pending the trial, a person cannot be kept in custody for an indefinite period of time and it clearly violate the fundamental right enshrined in the Constitution and time and again, has been considered to be a justiciable ground to exercise the discretion to release an accused.”

5. Learned APP Mr.PT.Lahudkar argued as per say Exh.169 and urged to reject the application.

6. I have considered the submission of both sides. Perused the application, say filed by the prosecution, charge sheet and documents on record.

7. After perusal of charge sheet, it shows that as per movement register seized from the accused Bharat Vishwas Lahudkar, applicant/accused was having unatuhorized custody of school girls including victim in the Ashram Pala Shala. He by showing knife committed sexual intercourse with the minor victim girls. Said knife has been seized from the custody of applicant/accused. As per medical certificate, accused committed rape against the victim girls.

8. The record shows that after framing of charge, prosecution examined two witnesses including informant and victim girl. Both have not supported to the prosecution. Therefore, learned APP was allowed cross examined them, but no material came on record from the prosecution witnesses. The record shows that rest of the accused have been released on regular bail. Applicant/accused arrested on 3.11.2016 and since then he is behind the bar. He is facing trial for the offence punishable under Sections 376(2)(f)(l)(n) of the Indian Penal Code, which provides the punishment of imprisonment not less than 10 years, but may extend to life imprisonment. Rest of the charges under Indian Penal Code provides punishment less than 07 years imprisonment. Accused is also facing trial under Sections 4, 6, 17 and 21 of the Protection of Children From Sexual Offences Act, Section 4 provides imprisonment not less than 10 years but which may extend to life imprisonment. Section 6 provides punishment not less than 20 years rigorous imprisonment, but may extend to life imprisonment. Rest of the Section 17 and 21 of the POCSO Act, provides the lesser punishment. Accused is also facing the trial for the offence punishable under Section 3(2)(v) of the Atrocity Act, which provides the imprisonment of 10 years or imprisonment of life. The record shows that accused is behind the bar since last more than 07 & ½ years. Till today, prosecution succeeded to examine only two witnesses. Victim and informant have not supported to the prosecution. Applicant/accused is resident of Khamgaon Taluka and victim and informant are resident of Jalgaon District. Therefore, no possibility of pressurizing the witnesses by the accused. There is no possibility to

conclude the trial within span of short time period. Hence, in the light of observation of the Hon'ble Bombay High Court, in the case of Akash Satish Chandalia V/s. The State of Maharashtra, the applicant/accused is entitled to be released on bail. Moreover, he is ready to abide each and every condition imposed, if he released on bail. Therefore, though the prosecution has resisted the application, but if applicant/accused released on bail on certain conditions, then prosecution will not be prejudiced. Hence, application deserves to be allowed. In result, I pass following order :-

ORDER

- 1] Application Exh.165/2024 is allowed.
- 2] Applicant/accused namely Ittusing Kalusing Pawar be released on bail on his executing PR. bond of Rs.50,000/- (Rs. Fifty Thousand only) with one solvent surety in the like sum.
- 3] Applicant/accused shall remain present on every fixed date given by this Court.
- 4] Applicant/accused shall not pressurize the remaining prosecution witnesses.

Date : 24.9.2024

(G.B.Jadhav)
Special Judge, Khamgaon.

Certificate

I certify that this order PDF uploaded is a true and correct copy of original signed order.

Name of Steno : Mrs. Nishat Anjum Mohd. Rafique.
Name of Court : Special Judge, Khamgaon, Dist. Buldana.