

MHBU040014592023



Order below Exh.4
(Passed on 22.2.2024)

1. The instant application is preferred by applicant/accused Vitthal Samadhan Damodhar, for regular bail u/s 439 of the Cr.PC. in Crime No.624/2023 registered with Jalgaon Jamod police station for the offence punishable under sections 376, 376-B, 506 of the Indian Penal Code and u/s 4, 8 & 12 of the Protection of Children From Sexual Offences, Act 2012.
2. Application has been resisted by the learned APP Mrs.R.A.Alsi, by filing say at Exh.8. It is contended that accused has committed serious offence against six years girl. It is submitted that the report is lodged against the accused within time. As per medical opinion given by the medical officer General Hospital Khamgaon, that sexual assault possibility cannot be ruled out and final diagnosis will be given after report of sample. Hence, requested to reject the application.
3. The original informant on behalf of victim has resisted the application by filing protest petition vide Exh.9. It is contended that accused has committed serious offence if he released on bail, then he

will commit the similar offence and threatened to kill the informant and pressurized the witnesses. Hence, requested to reject the application.

4. Mr. A.Z.Khan learned advocate for applicant/accused has submitted that since 22.11.2023 accused is behind the bar. He has not committed any offence as alleged. He submitted that as per medical report, there is no sexual assault committed by the accused. Applicant/ accused is ready to abide each and condition imposed him while releasing on bail. The investigation has been completed and charge sheet has been filed. Hence, prayed for enlarging him on regular bail.

The learned advocate for applicant/accused has relied upon the case law-**Bhimrao Manikrao Dhole V/s. The State of Maharashtra, Bombay High Court Nagpur Bench, LD-VC Criminal Application [BA] No.155 of 2020, D/d 16.6.2020**. In which the Hon'ble Bombay High Court Bench at Nagpur, while releasing the accused on regular bail, for the offence punishable u/s 376-AB, 376(2)(j), 342, 511 of IPC and section 4 and 8 of the Protection of Children From Sexual Offence, Act, observed that the entire emphasis of the applicant is on absence of penetration. There is also emphasis on absence of medical opinion to the effect that sexual intercourse has been committed. There is emphasis on completion of investigation and old aged of the applicant. It indicated of the fact that the offence of sexual harassment is less serious than the offence of sexual assault.

5. Learned APP Mrs.R.A.Alsi, has argued as per the Say vide Exh.8 and urged to reject the application.

6. I have considered the submission of both side. Perused the application, say filed by prosecution, and victim. I have also perused the authority cited by applicant, charge sheet and documents on record.

7. As per charge sheet, accused who is 50 years old has committed rape on the six years old daughter of informant. Therefor, after completion of investigation police have submitted charge sheet under sections 376, 376-B, 506 of the Indian Penal Code and u/s 4, 6, 8 & 12 of the Protection of Children From Sexual Offences, Act 2012. The offences levelled against the applicant/accused are very serious in nature. As per medical opinion, there is no evidence of injury to vulva, vagina, Perineum and on body still sexual assault possibility cannot be ruled out. Final diagnosis will be given after report of sample.

8. I have respect to the observation in the authority cited by the advocate for applicant, but it is not helpful to the applicant because facts are different. In the cited case accused was 65 years old and victim girl was 08 years old. In the present case accused is 50 years old and victim girl is 06 years old. The medical opinion is not final. The charge sheet shows that the report of sample is not yet received. There is sufficient evidence on record to proceed with the same. The role of applicant/accused in commission of the crime can be very well made out from the papers on record. There is no change in

circumstances. Therefore, after considering all the factors, the complicity of the applicant/accused, I am not inclined to release the applicant/accused on bail. Hence, application deserves to be rejected.

In result I pass following order :-

ORDER

1] Application Exh.4 stands rejected.

Date : 22.2.2024

Sd/-
(G.B.Jadhav)
Special Judge, Khamgaon,
Dist. Buldhana.

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. Buldhana.