

IN THE COURT OF DISTRICT JUDGE-1, & ASJ, GONDIA.**SPECIAL (POCSO) CASE NO. 05/2020.**
(CNR NO.MHGO01000046-2020)**State, PSO, Duggipar -Vs- Rakesh Baburao Davaikar+3****ORDER BELOW EXH.33.**(Passed on this 16th day of July, 2022)

This is an application filed by applicant/accused Amol Pandurang Narnaware for grant of bail u/s 439 of Cr.PC. The applicant/accused has been arrested on 15/11/2019 by Police Station, Duggipar in Crime No. 263/2019 for alleged offence punishable under Sec. 376(d), 307 r/w Sec.34 of IPC and Sec. 4 & 6 of POCSO Act. This is third bail application.

2] Brief facts of the prosecution case is as under:

That, 03/11/2019 there was a programme of Mandayi at village Birri. In the said Mandayi there was a drama at about 9.30 p.m. Victim aged 10 years went towards the stage of the drama at about 8.00 a.m. As it was informed that the students on showing their I-card would get free entry. At 9.30 p.m. one Kailash Tiwaskar brought the victim home who was crying and told her that one unknown person aged about 21-22 years, gave her 10 rupee note and asked her to accompany him and tried to pull her. When she resisted he threatened to assault her. While going he made a call to somebody and told them that he bringing the girl, he took her

near the tank (Talao). While two other persons caught hold her the said person committed rape. Thereafter, all the three persons banged her head and tried to drown her in the tank.

3] Learned Advocate Shri Lingayat for the applicant submits that the earlier application was rejected by order dated 24/02/2021 passed below Exh.10. However, there are change of circumstances. The co-accused has been granted bail by the Hon'ble High Court. In support there of he has relied upon the case of Kirpalsingh @ Dayalsingh -Vs- State of Punjab, 2000 (3) Crimes 332, Punjab & Haryana High Court and the case of Ahemad Nabi and oth. -Vs- State of UP, Allahabad High Court.

4] He further submits that the co-accused Bandu Lakde has been granted bail by the Hob'ble Bombay High Court in Criminal Application (B.A.) No. 339/2021 by order dated 12/07/2021. In the change of circumstances and on the ground of parity, the applicant is entitled for grant of bail. Even otherwise though the applicant has been identified by the victim in T. I. Parade it is vitiated as on the earlier occasion when the applicant was shown to the victim on 03/11/2019, she did not recognize him as per the statement of Pralhad Govindrao Meshram. The T. I. Parade was conducted after two months in which she has now identified the applicant.

5] Learned advocate for the applicant further submits that as per the statement of Kailash Tiwaskar a girl had disclosed the colour of the clothes of the assailants. The clothes recovered from the applicant do not match their colour. He further submits that the medical examination report does not show the injuries on sexual organs. He has thus prayed for grant of bail.

6] I.O. has filed reply at Exh. 34 and opposed the application on the ground that the offence is grievous. The victim was of 10 years and was forcibly taken towards the tank where the applicant held her while the other co-accused committed rape. Prima facie case is made out. The applicant has been identified by the victim in the T. I. parade. There are chances of applicant tampering the witnesses. He has prayed for rejection of the application.

7] Ld. APP Shri. Pardhi has opposed the application on the ground that the earlier bail application of the applicant has been rejected. Hence, this application is not tenable. The applicant caught the hand of the victim while the offence was being committed and tried to kill her. He has thus prayed for rejection of the application.

8] The earlier bail application Exh.10 came to be rejected on merit. The bail application of co-accused Bandu

Lakde came to be allowed by Hon'ble High Court on the ground that he was not identified by the victim in T. I. Parade. Whether the T.I. parade is vitiated is a matter of evidence and cannot be decided at this stage. Since the case of Bandu Lakde and the present applicant are on different footing as Bandu has not been identified in T. I. Parade, parity would not apply. Since the bail was granted to Bandu as he was not identified in T. I. parade there would be no change in circumstances to the applicant whose bail application rejected earlier holding that prima facie case is made out. The offence is grievous and the victim was of only 10 years of age at the relevant time. Hence, I pass the following order.

ORDER

- 1] Application [Exh.33] is hereby rejected.
- 2] Application is disposed of.

Gondia.
Dated:16.07.2022.

Sd/-*
(Adil M. Khan)
District Judge-1 & ASJ,
Gondia.