



ORDER BELOW EXH.2 SPL.POCSO CASE NO.43/2024.
(CNR NO.MHGO010003302024)

1. This is a regular bail application filed by applicant **Rohit Gopal Pusam** u/sec.439 of Cr.PC seeking regular bail in CR No.12/2024 u/sec.363, 376(2)(n) of IPC and u/sec.4 & 6 of POCSO Act registered with Gangazari police station.
2. On 05-01-2024, the child aged 13 years, 2 months and 2 days old lodged report in Gangazari police station, wherein she alleged that she is studying in 8th std., whereas, her friend Samiksha is studying in 9th std. They both go to school on bicycle. On 08-11-2023 she got acquainted with Rohit Gopal Pusam (applicant) friend of Samiksha. She started talking with applicant from the cellphone of his mother. On 15-12-2023 applicant met her near her school and asked her to come with him for a ride. She went with applicant to village Bhanapur and while coming at 3.45 am applicant took motorcycle in the jungle. Applicant said “मला करायचं आहे” and inspite of refusal applicant forcibly established sexual relationship with her. Thereafter, applicant dropped her.
3. The child further alleged on 05-01-2024 she made call to applicant and applicant asked, “आज फिरायला जावुया का? She nodded. Samiksha dropped her near cycle repair shop where applicant was

waiting. Applicant told her that they will go on motorcycle to Mandodevi, Goregaon. However, she was receiving call on her mother's cellphone, hence refused. Applicant took her to Bhanapur jungle and again forcibly established sexual relationship with her. While coming back she read message of her father on cellphone in which her father sent message "आम्ही रिपोर्ट टाकायला चाललो". She got frightened and told applicant about it who asked her to make excuse of not feeling well and dropped her at (name of place withheld). She reached home at 4.00 pm and narrated the incident to her parents.

4. According to applicant, no such incident occurred . The child and the applicant were in romantic relationship and when her parents came to know about it, false report was lodged. The alleged incident took place in day light, hence, passerby would have witnessed the incident. The investigation is over and charge-sheet is filed. He is a young boy and is ready to abide any terms and conditions imposed by this Court. Hence, prayed for allowing the application.

5. The I.O, Ld. PP and the child filed their respective say vide Exh.4 to 6 and objected the application on the ground that at the time of offence the child was merely 13 years of age and inspite of knowing she was minor raped her more than once. Thus, prima-facie the report proves involvement of applicant. If released on bail, applicant will threaten the child and the witnesses related with case and there is threat to the life of the child. Hence, rejection of application is prayed.

6. Adv. Upwanshi submitted that applicant and child were in romantic relationship and when her parents came to know about it forced to child to file false report of rape. The report itself reveals the child on her own occurred went with the applicant and there was no any forcible sexual intercourse as alleged. He further submitted that the investigation is complete and charge-sheet is filed and since 06-01-2024 the applicant is behind bar. There is likelihood of trial commencing and it will amount to punitive Hence, prayed for allowing the application.

7. Whereas, Ld.PP Chandwani submitted that the child at the time of incident 13 years and 2 months hence her consent is immaterial and the report does not show the child on her own accord surrendered to the desire. On the contrary applicant knowing child to be studying in 8th std twice raped her without her consent. Thus, the prima-facie case is made out and considering the age of child to be 13 years old it is not a fit case to release the applicant on bail. He further submitted that, the prosecution is ready to expedite trial. He also expressed apprehension to the life of the child from applicant.

8. Perusal of the report at this stage reveals the child was merely 13 years of age, whereas, the applicant was aged 19 years when the alleged incident took place. The report does not indicate applicant was having an affair with the applicant. Even for the sake of argument if it is held to be a love affair, still consent is immaterial considering the age of the child. As discussed above neither the child claimed to be having an affair with applicant nor she claimed she

surrendered to the desire of having sexual intercourse with accused. On the contrary she claimed to have gone with applicant for a ride wherein applicant forced upon her to have sex.

9. Thus, prima-facie ingredient of sec.376 (2)(n) of IPC and sec.4 and 6 of the POCSO Act is made out. The forensic medical examination of the child reveals tear of hymen. Thus, at this juncture the evidence goes against the applicant. The child was not having knowledge of the worldly affairs and she was introduced with the applicant by her friend Samiksha. Considering serious allegations of applicant committing sexual intercourse with child aged 13 years old prima-facie twice shows his involvement. If released on bail again applicant threatening the child cannot be ruled out. At the most the trial can be expedited. Therefore, I am of the view that applicant is not entitled to be released on bail. In the result, I proceed to pass the following order:

ORDER

Application Exh.2 stands rejected.

Gondia.
Dated:27-05-2024

(N. B. Lavte)
Special Judge, **Gondia.**