



IN THE COURT OF SESSIONS JUDGE, GONDIA.

SPECIAL (POCSO) CASE NO. 43/2024

(CNR NO.MHGO010003302024)

State -Vs- Rohit

ORDER BELOW EXH.10

(Passed on 19.05.2025)

This is second bail application after rejection of previous bail application vide Exh.2 by order dated 27.05.2024. By the present application, the applicant prayed to release him on bail contending that he is young person aged only of 18 years. He is behind bars since his date of arrest i.e. 06.01.2024, about one year and six months. The trial may take its own time. Keeping him behind bars any further it is not in the interest of the applicant, relying on the judgment in the matter of **Mandip Gyan Singh .Vs. State of Maharashtra 2025(1) Bom CR (Cri) 867**, learned advocate argued that the case of applicant is similar to the cited case. In the cited case the age of victim was 14 years and considering the mitigating factor the accused is released on bail. He also argued that there is no incriminating material in RFSL report. He also pointed out the say filed by the victim that she has no objection to release the applicant on bail. He prayed to allow the application.

2. Learned APP Shri. K. D. Pardhi objected the application contending that the victim is just about 13 years of the age on the date of incident. If released, the applicant may influence the victim, threaten her and also repeat the offence and prayed to reject the application and also filed say on the application.

3. Concerned Police Station also opposed the application by filing say at Exh.11.

4. In this case, the involvement of the applicant is considered in previous bail application, which does not require further consideration as the material is available against applicant showing his involvement in the crime of aggravated penetrative sexual assault upon a child minor aged 13 years and 3 months on the date of offence. Therefore, the theory of consent and love affair cannot be accepted. The consent of such a minor is no consent in the eye of law. Moreover, the contention that RFSL report is not incriminating, also cannot be accepted for the reason that the legging and undergarment of the victim show presence of semen. DNA profiling is awaited, however it is not the case that the victim was involved with someone else, even as per the case of applicant in his bail application, which states that he was having affair with the victim as also narrated in the report of victim.

5. The only ground now which remains is, age of the accused and his prolonged incarceration pretrial. The applicant stated that he is ready to abide by all the conditions. There is no sign of violence used by the applicant, even as per prosecution case. In view of the cited judgment referred above, the Hon'ble High Court was pleased to consider the age of accused of 25 years and age of victim of 14 years, in which case the victim left home with money and stayed with the accused at different places for 15 days. After referring the judgment in the matter of **Sunil Mahadeo Patil .Vs. State of Maharashtra**, in **Bail Application No.1036/2015** decided on 03.08.2015, observed in para 12 and 16 as under:-

“12. The overall considerations while deciding such applications can be summed up as -

When a boy and a minor girl are in love with each other and chose to live together without consent of their parents, then the following factors are to be considered:

- (i) What is the age of the prosecutrix, who is minor.
- (ii) Whether the act is violent or not.
- (iii) Whether there are antecedents or not.
- (iv) Whether the offender is capable of repeating the Act or not.

- (v) Whether there is likelihood of threats or intimidation, if at all the boy is released.
- (vi) Whether any chance of tampering with the material witnesses when their statements are recorded.
- (vii) It is also to be taken into account in such cases that a boy in his early 20's deserves to get employment and to plan, stabilize and secure his future.”

“16. Multiple decisions of the Hon’ble Supreme Court and various other High Courts have favoured the release of young offenders on bail pending trial so that the regressive influences of jail environment can be avoided and keeping in mind the principle of best interest in the aforesaid circumstances.”

6. In the present case, the accused on the date of arrest was only 18 years of age and admittedly has no criminal antecedents. While rejection of previous application, it was proposed to expedite the trial. Till today charge is not yet framed. Though the prosecutrix is aged only 13 years and 3 months on date of offence, however, on previous date, she appeared on notice of application along with her father and filed no objection to grant bail. In this situation considering the pendency of other under trial cases and old matters, this matter may take some time to be tried. Keeping the young accused who himself was 18 years of age on the date of

offence, in the company of harden criminal for any further period, who is already behind bars for more than one year would be counter productive. On the other hand, the apprehension of the State can be considered by imposing stringent conditions, which will suffice the purpose as per the principles of bail.

7. In view of above, though not on merits the applicant deserves to be released on bail considering his own age and the circumstances in this case that the victim went on ride with accused twice in brought day light when on second time she went with accused, she received phone that her parents are going to lodge report, that time she returned. In view of above on stringent conditions application deserves to be allowed. Hence, order:-

ORDER

- 1) Application Exh.10 for bail is allowed.
- 2) The applicant shall furnish Personal Bond of Rs.20,000/- with one surety in the like amount on following conditions:-
 - i) Applicant shall report to the Police Station, Gangazari on 1st Monday of every month between 10:00 to 11:00 a.m. for first six months and thereafter, as and when called by the Police Station Officer concerned.
 - ii) Applicant shall co-operate with the conduct of trial and attend the Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order.

- iii) Applicant shall not leave the State of Maharashtra without prior permission of this court.
- iv) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; Applicant shall not make any attempts to re-associate with the complainant/victim in any manner either through a device or in-person.
- v) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.
- vi) Any infraction of the above conditions shall entail the prosecution to seek cancellation of this order.

Gondia.
Date : 19.05.2025.

Sd/-
(R. N. Joshi)
Sessions Judge, Gondia.