

**IN THE COURT OF SESSIONS JUDGE, GONDIA.**  
**SPL. (P.O.C.S.O.) CASE NO.38/2020**  
**CNR No.MHGO010003612020.**  
**STATE OF MAH. VS. RAMPRASAD HARINKHEDE.**

**ORDER BELOW EXH.03.**

(Passed on this 9<sup>th</sup> July, 2020)

1] This is an application under Section 439 of the Code of Criminal Procedure for grant of bail in connection with the offences punishable under Section 376(AB) of the Indian Penal Code read with Section 4 and 6 of the P.O.C.S.O. Act in which crime is registered at Cr. No.37/2020 at Gondia Rural Police Station.

2] It is alleged that accused is neighbour and relative of the victims. On 05/02/2020 accused took the victims Shrawani and Minakshi to his land. While going he purchased chocolates and committed sexual assault on the victims which are aged about 7 years and 9 years respectively. While returning from field, he gave Rs.10/- each to both the victims and threatened not to disclose about the incident in the land.

3] It is the contention of accused that the alleged incident took place on 05/02/2020. The matter is reported to the Police Station on 10/02/2020. There is extra ordinary delay in filing FIR. The accused is falsely implicated in the crime. There is no medical evidence supporting the prosecution case. As per the

alleged story of the prosecution, the place of incident is such that external injuries must occurred. It is further contended that “Darubandi Mission” is being initiated at village Fulchur. The accused and his wife have taken active part. Therefore, the villagers who are selling the illegal liquor are having grudge against them. Tejram Bhandarkar is the relative of Deogade the brother-in-law of the complainant. At his instance, the false complaint is lodged.

4] The accused is innocent. He has not committed any offence. He is ready to furnish bail. He will not tamper with the prosecution evidence or will not abscond. He is ready to abide as per the terms and conditions imposed. Therefore, requested to grant bail.

5] Prosecution has strongly objected the bail application. According to prosecution, the age of the victims is 7 and 8 years respectively. Accused took these small girls in his field and committed rape on them one after the other. The offence is serious. There is ample evidence against the accused. If the accused is released on bail, he may tamper with the prosecution evidence and threaten the witnesses. Therefore, prosecution requested to reject the bail application.

6] Heard learned advocate for accused Shri Jani and learned DGP for State. Perused R & P.

7] Following points arise for my determination, I have recorded my findings against them for the reasons to follow:-

**POINTS**

**FINDINGS**

- |  |  |
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| <p>1. Whether the applicant/accused is entitled to be released on bail in Crime No.37/2020 registered at Gondia Rural Police Station for the offence punishable under Section 376(AB) of the Indian Penal Code read with Section 4 and 6 of the P.O.C.S.O. Act ?</p> | <p><b><u>In the Negative.</u></b></p>    |
| <p>2. What order?</p>  | <p><b><u>As per final order.</u></b></p> |

**REASONS**

8] **AS TO POINT NO.1:-** According to learned advocate for accused, there is inordinate delay in filing FIR. It is a concocted FIR. Medical report falsified the prosecution case. There is no external injury. The probability of self infliction of the injuries cannot be ruled out and the accused is active member in the Mission of Darubandi at village Fulchur. He is falsely implicated at the instance of relative of the complainant, who is dealing in sell of illicit liquor. Therefore, learned advocate for accused requested to grant bail.

9] Learned DGP submitted that in the

statement of victim Minakshi at page No.47, she has narrated about the actual acts of the accused with Shrawani and herself. Learned DGP further pointed out page No.49 the statement of victim Shrawani recorded under Section 164 of the Code of Criminal Procedure. In her statement, Shrawani has disclosed actual acts of the accused which are amounting to sexual assault. Learned DGP further submitted that under P.O.C.S.O. Act penetration is not necessary. The accused is neighbour and relative of the victims. He may tamper with the prosecution evidence. Therefore, learned DGP requested to reject the bail application.

10] After considering the investigation papers particularly the FIR in which the explanation is given about delay in filing the FIR and considering the statements of victims at page No.47 and 49 of the charge-sheet, it is clear that there is ample evidence against the accused for his active involvement in the crime.

11] The argument that there is delay and therefore there is concoction, cannot be accepted. The delay is explained by complainant and which is plausible explanation. There is circumstantial evidence in the form of statement of witness Udaram Fattuji Chindhalore that on the alleged date of incident accused was in the company of victims and purchased

chocolates from the shop of Udaram. There is also statement of witness Monali disclosing that victim Shrawani has visited her shop with 10 rupee coin.

12] The medical report of one of the victim is at page No.21 and in respect of other victim is at page No.27. It is the contention of learned advocate for accused that there is no corroboration by the medical evidence and therefore the accused is entitled to be released on bail. On perusal of page No.21 of the charge-sheet, it is clear that there is opinion of the Doctor about attempt of sexual assault as there is swelling over the vulva and vagina. On considering the page No.27, it is clear that Medical Officer has opined that some person has attempted sexual intercourse with this victim.

13] The medical evidence on record supports the prosecution and points out that there is attempt of sexual intercourse. In an offence under Section 4 of the P.O.C.S.O. Act, punishment for penetrative sexual assault is provided which extend to imprisonment for life. The definition of penetrative assault as given in Section 3 of the P.O.C.S.O. Act includes any acts of manipulation of any part of the body of the child with sexual intent.

14] There is direct evidence against the accused in respect of penetrative sexual assault on the victims.

The accused is neighbour and relative of the victims. There is every possibility that he will tamper with the prosecution evidence. Considering all these aspects, I am not inclined to grant bail. I, therefore answer point No.1 in the negative and pass following order:-

**ORDER**

- 1] The application Exh.3 is rejected.

Sd/-

Gondia  
Dated:-09/07/2020.

(Suhas V. Mane)  
Sessions Judge, Gondia.