

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE
(POCSO), GONDIA.**

**Special C. No. 38/2020
(CNR No. MHGO010003612020)
State Vs. Ramprasad Harinkhede**

ORDER PASSED BELOW APPLICATION (EXH-9)

The applicant/accused who has been charge-sheeted by Police Station, Gondia Gramin with the offences punishable u/sec.376 (A, B) of Indian Penal Code read with sections 4 & 6 of Protection of Children from Sexual Offences Act, 2012 has filed this bail application u/sec. 439 of Cr.P.C. His first application was rejected by my Ld. Predecessor vide order passed on Exh-3 dt. 9th July, 2020. The applicant has filed the present application on the ground of change of circumstances.

2. The prosecution has alleged that there are two victims aged 7 and 8 years. The accused is neighbour and relative of the victims. It is alleged that on 5/2/2020, accused took the victims to his land. While going there he purchased chocolates for them and committed sexual assault on the victims in the field. It is also alleged that while returning from the field, accused threatened the victims not to disclose the incident to any one and gave them Rs. 10/- each.

3. Heard Ld. Advocate for applicant/accused Advocate Upwanshi and Ld. Spl. P.P. Advocate Pardhi for the

State. It was argued by Ld. Advocate for accused that alleged incident occurred on 5/2/2020 and report was lodged on 10/2/2020 after delay of five days. It was submitted that the incident was reported by one of the victims to her mother on the same day and inspite of this fact, report was lodged late for which there is no explanation. It was further argued that from medical report of victim Shrawni, it is seen that there was no evidence of major injury to vagina except swelling over vulva which could have been occurred when the children were playing on a heap of '*Dhan*'. It was also submitted that in the CA report no blood or semen was found on the clothes of victim Minakshi and all these creates doubt about truthfulness of prosecution case. According to Ld. Advocate, filing of CA report subsequent to the rejection of first application gives a new cause of action to file second bail application.

4. The Ld. Spl. P.P. argued that earlier application was rejected on merit. It was stated that accused stand in a fiduciary relations with the victims. As regards delay, it was submitted that victim's mother was in dilemma whether to file report as she feared that the family would be defamed. It was submitted that in case, applicant is released on bail, there is every possibility of accused threatening the minor victims.

5. After perusal of the earlier order on Exh-3, it can be seen that the points except CA report were already

argued before my Ld. Predecessor and were considered by him. As regards delay, the complainant has stated in the report that though her daughter reported the incident to her on 6/2/2020, she was frightened that the reputation of her daughter and family is at stake and therefore initially due to fear she did not report the incident to her husband but on 10/2/2020 she could not suppress the fact and told it to her husband and thereafter her husband took victim and herself to Police Station, Gondia Gramin and report was lodged. The reason prima facie appears to be proper and natural.

6. I have perused the medical report of both the victims. They show that there was swelling over vulva and vagina of one of the victim's and considering this, Medical Officer had opined that it was a case of attempted sexual intercourse with the child. Therefore, the medical evidence prima facie shows attempt of sexual intercourse. The statement of the victim Udaram shows that on the date of incident accused was in the company of victims and purchased chocolates from his shop. There is also the statement of one Monali disclosing that victim Shrawni had visited his shop for 10 Rs. Coin. Thus, there is sufficient prima facie material suggesting involvement of applicant in the offence. Even if filing of C.A. report is considered to be a new circumstance, the C.A. report shows that there were blood stains on the harem of one of the victims. Therefore, I do not think that C.A. reports support the accused and on

the basis of this reports accused is entitled for bail.

7. On the basis of the material before us, there is direct evidence against applicant in respect of penetrative sexual assault. If accused is enlarge on bail, there is every possibility that he will tamper with prosecution evidence and threaten the child victims. The offence is against two girls of tender age who are aged 7 and 8 years. Considering gravity of the offence and prima facie material against applicant, applicant does not deserve the grant of bail. Hence, I proceed to pass the following order.

ORDER

1. The application (**Exh-9**) for bail stands rejected.

Gondia.
Dt. 24/06/2021.

(S.D.Tulankar)
Addl. Sessions Judge (POCSO),
Gondia.