

MHJN110004982023

**Cri. Bail Appln. in Spl. Case No. 37/2023**

Yogesh Vs. State of Maharashtra

Order Below Exh. 04, in Spl. Case No. 37/2023

Accused Yogesh Sunil Shinde has filed this application under section 439 of Cr.P.C. in CR. No. 296/2023 under Section 376, 376 (2) (N), 354-D, 506 of Indian Penal Code, 1860, and Sections 4, 8 & 12 of the Protection of Children from Sexual Offences Act and Sections 9, 10 & 11 The Prohibition of Child Marriage Act, 2006 registered with Ambad Police Station. He requested to release him on bail.

02] It is the case of prosecution that, the victim was living with informant at Bhalgaon road Fulenagar. He has performed the marriage of victim with Ranjeet before two months of 21-04-2023. On 21-04-2023 victim was brought to Bhalgaon from Sanapwadi. On 24-04-2023 the victim had left the house of informant by saying that she will come back after attaching to picko-fall to the sari but she did not return. Therefore, informant lodged the report of missing. During investigation police came to know that the victim was child. She has been kidnapped by accused Yogesh from lawful custody of informant and he raped her from time to time under the threat that he has her obscene photograph and if she could not co-operate he will make it viral. It is transpired from the statement of informant that the Rajneet got married with the child.

03] Accused Yogesh has filed this bail application and submitted that, he is innocent. He has not established sexual relation with the victim. He and victim is having love affairs since long. They were friends. The victim left her house and went to Mumbai alone by bus to meet parents of the accused. The victim wanted to marry with the accused. Accused is young person, he has feature. He will not flee from justice. No custodial interrogation is required. He requested for bail.

04] The APP has filed the say and submitted that, the offence is serious. There is chances to tamper with the prosecution witnesses. If accused released on bail it will carry bad message in the society. The C.A. report is yet to be awaited. He requested to reject the bail application.

05] Heard, learned APP Mr. W.A. Ghuge and Advocate for accused Mr. Honde. The victim is served with notice but not appeared in the proceeding.

06] I have gone through the record, it appears the co-accused Ranjit Prakash Gaikwad is released on bail.

07] The missing report dated 24-04-2023 filed by brother of victim discloses victim was married before two months of 21-04-2023 with co-accused Rajnit Gaikwad. The missing report further shows the age of victim was 19 years. The victim left the house of informant on her own by saying she would come back after stitching the picko-fall to the sari.

08] On 26-04-2023 uncle of victim has filed the report alleging the age of victim is 17 years old. She narrated to him that when she had been to natures call behind their house in March-2023 at that time accused forcefully established sexual relation

with her. Accordingly, he has lodged the report.

09] It appears from the report dated 26-04-2023 that accused given threat to her when he met at Ambad on 24-04-2023 and forced her to go alone to Mumbai to meet his parents.

10] The statement of victim recorded u/sec 164 of Cr.P.C. dated 08-05-2023 discloses that before the marriage of victim, accused snapped some photographs of victim when she was answering nature's call. After marriage whenever accused met her, he established sexual relation with her under threat, he will make viral her obscene photographs. In short, the facts stated in the statement u/sec 164 of Cr.P.C. by victim and facts stated by the informant in the report dated 26-04-2023 are altogether different.

11] The victim alone went to Mumbai on 24-04-2023. She herself left her house and went to Ambad from Bhalgaon where accused met her and told to go to Mumbai. The conduct of victim prima-facie indicates, she must be in love with the accused but those facts came into picture when victim had left the house after her marriage with co-accused Ranjit Gaikwad. She was not accompanied by the accused when she had gone to Mumbai by bus from Ambad.

12] The parents of victim have performed the marriage of victim with co-accused Ranjit Gaikwad. Despite she is married with Ranjit Gaikwad, she had left the house her own and under instruction of accused went to Mumbai to meet the parents of accused. This speaks a lot.

13] There is no specific date and day has been mentioned anywhere to say that on particular day, the accused has established sexual relation with victim.

14] The medical evidence is on record which does not show in that there were any injury marks on the body of victim showing she was sexually assaulted soon before the report.

15] According to the informant, the incident is of March-2023. Whereas the report is lodged on 24-04-2023. There is extraordinary delay in lodging the report. If victim was not consenting party to have sexual intercourse, she could have narrated the incident to her parents forthwith in March -2022 itself.

16] I am aware that the victim is minor and therefore, her consent to have sexual relation is not material. Her consent is no consent. Accused referred the case of ***Sunil Mahadev Patil Vs. The State of Maharashtra, 2016 (3) Bom C.R. (CRI) 435 & 2015 (3) AIR BOM. R (CRI),594, Aniruddha Radheshyam Yadav Vs. The State of Maharashtra, 2020 ALL MR (CRI),1351, Amol Kailas Patil (Borse) Vs. The State of Maharashtra, Bail Application No. 1241 of 2019 (Aurangabad Bench), Imran Iqbal Shaikh Vs. State of Maharashtra 2023 SCC Online Bom 1040, Hon'ble Allahabad High Court, Atul Mishra Vs. State of U.P. in Bail Application No.53947 of 2021, 2023 SCC Online Bom 1040.***

17] It appears from the para supra cases, Court has to consider the mitigating factors, age of prosecutrix, whether act is violent or not, whether there is antecedent or not etc while considering the bail application in case of victim is minor.

18] The age of victim is mentioned in three places is different and not matched to each other. The victim was already married with one Ranjit Gaikwad. The accused has not accompanied to the victim on 24-04-2023, when she was going to Mumbai. The mother of accused herself convinced to the victim and sent back her to her parents home. It will take sometime to proceed with the matter. Accused is 22 years young person. He is in jail since 26-04-2023. The investigation is completed and charge

sheet is filed. In this circumstances, in view of law laid down in para supra cases, and facts and circumstances appeared from the investigation papers, it is desirable to protect the liberty of accused. Accused has made out the case for bail. Hence, in the interest of justice, I pass the following order.

ORDER

- a] Application is allowed.
- b] Accused **Yogesh Sunil Shinde** be released on bail from CR. No. 296/2023 under Section 376, 376 (2) (N), 354-D, 506 of Indian Penal Code, 1860, and Sections 4, 8 & 12 of the Protection of Children from Sexual Offences Act and Sections 9, 10 & 11 The Prohibition of Child Marriage Act, 2006 registered with Ambad Police Station on executing PR bond and SB of Rs.50,000/- with one surety in the like amount or cash security.
- c] Accused shall not try to contact with the prosecution witnesses in any manner.
- d] Accused shall co-operate to the I.O. and made available as and when required.
- e] Accused shall not tamper with the prosecution witnesses.
- f] Accused shall not leave the India without prior permission of the Court.

Date: 01-08-2023

(Pralhad C.Bhagure)
Special Judge,
Ambad

Certificate

I affirm that the contents of this PDF file are word to word as per original judgment.

Name of Steno :- Navnath D. Sahane
Name of Court :- Special Court, Ambad
Date :- 01/08/2023

sd/-
Stenographer L.G.