

MHKO010002342024 	<u>Order below Exh. 10</u> <u>in Spl. Case No. 11 of 2024.</u>
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1. This is second application filed by the applicant/accused Santosh Bajirao Powar seeking bail under section 439 of Cr.P.C. in regard with Crime No. 569 of 2023, for the offence punishable under Sections 363, 366-A, 376 (2) (n) r.w. Section 34 of the Indian Penal Code and under Sections 4, 8 and 12 of Protection of Children From Sexual Offences Act, 2012 registered at Police Station Rajarampuri, Dist. Kolhapur.

2. Case of the prosecution in short as follows that -

The informant Shanta Rudrappa Ulagaddi resident of Tembalaiwadi Zopadpatti, Kolhapur lodged complaint to police station Rajarampuri on 16.11.2023. As per her complaint, she resides with her husband Rudrappa and sons Mahadev, Pratik, Pramod, Veerbhdra at given address. Her husband is doing rickshaw driving work. She knows the mother of the victim having age 40 years resident of Shiganapur since three year. Her husband died before five years. Then said woman remarried. From her first husband, she has two daughters and one son. Victim is one of

her daughter having date of birth as 28.12.2005. After remarriage of said woman, she sent the victim girl at the house of informant and since 15.1.2022 the victim girl is residing at the house of informant and informant is maintaining her. On 16.11.2023 at early morning the victim girl did not find at home. So the informant and other persons started her search at different places and also inquired with the mother of the victim girl but she did not find. So on suspicion that someone have kidnapped her, the informant went to police station and gave the details of the victim girl and lodged the complaint against unknown person. On its basis aforesaid crime came to be registered U/s.363 of the Indian Penal Code.

3. During investigation, the investigating officer recorded statements of different persons. On 25.11.2023, mother of the victim girl came to know that the victim girl is at Walneswadi, Miraj. So she sent her relatives at that place. The victim girl was found with accused Pramod at house of Pankaj Koli. So they were brought to police station on 26.11.2023. The victim girl disclosed that she was residing at the house of informant. The informant had decided to perform marriage of victim girl with her son Pramod after completing her 18 years of age and consent of the mother of the victim girl was taken. On

11.11.2023, dispute occurred between her and Pramod. She was unhappy with the family members of the informant. Since last one and half months, Santosh Bajirao Powar a friend of elder brother of Pramod was visiting to the house of informant and love affair developed between Santosh and victim. On 15.11.2023 Santosh came to her and told that they will go together on next day morning and he will take her for marriage. Then on 16.11.2023 at 4 a.m. accused Santosh came on motorcycle, took with him and they went at Belgaum and Santosh kept her in the house of sister of Dnyaneshwar Gawade at Koulage and Santosh returned at Kolhapur. After three days he came back repeatedly. During said period till 23.11.2023, they had physical relations between them in one room. Then Santosh took her at Bhavaninagar, Belgaum at the house of his sister and at that place also there were physical relations between them. Then on 24.11.2023 she asked Santosh that she wants to go to her mother and so Santosh brought her to Belgaum bus stand. She made phone call to Pramod Ulagaddi and called him. Pramod came there and she came at Kolhapur. Pramod told that they will perform marriage and took at Sangali and then took at his friend Pankaj Koli at Olnaswadi. She was there till 25.11.2023. During that period, accused committed physical relation with her for two times. Then

Pramod informed to his father. Then her relatives came there and brought at police station. On basis of said discloser, the investigating officer added different sections under IPC and POCSO Act in the crime.

4. The applicant was arrested on 26.11.2023. Now he is in MCR. Earlier bail application No. 29/2024 was rejected. Now he has filed this bail application on the ground of change in circumstances.

5. The learned counsel for the applicant-accused has submitted that the applicant-accused is innocent and he has not committed any offence. He has been falsely implicated in the present crime on suspicion. He is deeply rooted in the society and ready to obey the terms and conditions imposed by the Court while releasing him on bail. The learned counsel for the applicant-accused has further submitted that the investigation in the present crime has been completed, chargesheet is filed and custodial interrogation of the applicant-accused is not required to the police. With these submissions, the learned counsel for the applicant has prayed for releasing the applicant-accused on regular bail.

6. The investigating officer has filed say at Exh. 19 through learned Addl.P.P. Shri. S. S. Rote elaborating the

investigation, the investigating officer has raised objection to release the applicant-accused on bail.

7. The learned Addl.P.P. Shri. rote has vehemently argued that the offence is very serious in nature. If the applicant-accused is released on bail, there is every possibility of pressurizing and threatening the victim and also other witnesses and tamper the evidence by the applicant-accused. Therefore, the learned Adll.P.P. has prayed for rejection of the application.

8. Perused the record and say at Exh. 19. Heard Shri. P. P. Bendake learned counsel for the applicant-accused and learned Addl.P.P. Shri. Rote for the State. Considering the facts of the case and the arguments advanced by both the sides, I come to the conclusion as follows:

9. It is argued by the Learned Advocate for the applicant-accused that the victim was 17 years 10 months at the time of alleged offence and had attained the age of understanding. Ld. Adv. for the applicant relied upon the statement of victim wherein she has stated that she had love affair with the present applicant.

10. Ld. Adv. for the applicant relied upon the medical certificate of the victim and argued that alleged sexual relations was consensual.

11. Learned Advocate for the applicant has relied upon the decision in case of **Ravindra Digambar Shinde Vs. State of Maharashtra – Aironline 2023 Bom. 1922.** I have gone through the ratio laid down in the above said decision. The guidelines given in this referred judgment are helpful to the applicant-accused.

12. It is further argued by the Ld. Adv. for the applicant that accused No. 2 has been released on bail. The alleged role played by the applicant is same as that of accused No. 2. Considering the facts and circumstances of the case and role played by the present applicant and co-accused No. 2 is same, hence, I find that the applicant is entitled to be released on the ground of parity.

13. On perusal of record, it *prima facie* appears that the incident occurred on 16.11.2023, and applicant-accused came to be arrested on 26.11.2023, which *prima facie* goes to show that the investigation in the present crime have been completed and further custodial interrogation of the applicant-accused is not required to the police. Further it reveals from arguments advanced on behalf of both sides that investigation is completed and chargesheet is filed. Nothing remained to be recovered or discovered from the accused. There are no criminal antecedents against this accused. The accused is local resident. There is no

possibility of fleeing the accused from justice. The trial against the accused will take its own time for its decision. The accused is not required to be detained in jail for uncertain period by way of punishment before conclusion of trial. As per recent catena of decisions of Hon'ble Apex Court bail is a rule and jail is an exception. In regard to apprehension of prosecution imposing stringent conditions on accused would suffice the purpose of prosecution. Hence, I proceed to pass following order :-

ORDER

- 1) The application is allowed.
- 2) The applicant-accused Santosh Bajirao Powar be released on bail in Crime No. 569 of 2023, for the offence punishable under Sections 363, 366-A, 376 (2) (n) r.w. Section 34 of the Indian Penal Code and under Sections 4, 8 and 12 of Protection of Children From Sexual Offences Act, 2012 registered at Police Station Rajarampuri, Dist. Kolhapur, on his furnishing P.B. and S.B. of Rs.50,000/- along with one surety in the like amount, on the conditions that;
 - (i) The applicant shall attend each and every date of this proceeding.
 - (ii) The applicant-accused shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to

dissuade them from disclosing such facts to the Court or to any Police Officer.

(iii) The applicant-accused shall not tamper the prosecution evidence, witnesses in any manner.

(iv) The applicant shall not enter in the vicinity/area wherein the victim/complainant is residing and shall not enter in the vicinity/area wherein the victim is taking education till final disposal of this case.

3) Breach of any of the above said condition shall result in cancellation of bail.

Sd/-

Dt. 7.2.2024.

(Smt.P.F.Sayyad)
Additional Sessions Judge-1,
Kolhapur.