

MHKO010018652023



Order below Exh. 3 in Spl. Case No. 108 of 2023.

1. This is an application filed by the applicant/accused Amir Sikandar Mujawar seeking bail under section 439 of Cr.P.C. in regard with Crime No. 237/2023, for the offence punishable under Sections 363, 354-A of the IPC and under Section 8 and 12 of the POCSO Act registered at Police Station Juna Rajwada, Dist. Kolhapur.

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

The complainant Smt. Dhanshri Thorat, the Superintendent of Sou. Nalini Shantarampant Walawalkar Kanya Nirikshan Gruh, Balkalyan Sankul, Kolhapur lodged complaint with Juna Rajwada police station on 29/03/2023. As per her complaint, she is the Superintendent of Balkalyan Sankul situated at Mangalwar Peth, Kolhapur. The minor victim girl aged 14 years and 6 months was admitted in the institute on 18/11/2022 on order of Child Welfare Committee. The said child was taking education in 9th standard in Princess Padmaraje Girls High School. The institute used to take the child at school and bring

back the child into institute by special vehicle. The complainant mentioned that on said day in the morning the victim girl was taken to school. The attendant of the vehicle went to school to take back the child at 11.15 a.m., but the child did not find. So, inquiry was made about her, information was also given to the mother of the victim child, but she did not find. Lastly, on suspicion that she is kidnapped by unknown person, the complainant lodged the complaint. On its basis, C.R. No. 237/2023 was registered for the offence under Section 363 of Indian Penal Code. The investigation was started. On next day, the victim was found as she came back and she was inquired. She disclosed that she had taken the mobile number of the accused from her friend. Said accused sent her Rs.200/- by Google Pay, called her at Islampur. The accused arranged for her journey and the victim went with Swaroop Shinde on his motorcycle at Islampur at bus stand. Then, she made phone call to accused at about 8.00 p.m. The accused took her at one lodge. The accused forcibly provided her liquor, attempted to do physical contact with her. However, she opposed. On next day, the victim called Swaroop Shinde to take back the victim and she came with him at Kolhapur at her home.

3. So, on the basis of her disclosure, the accused was arrested on 30/03/2023. The investigation is going on. Remaining sections were added in the crime.

4. Earlier Crim. Bail Apln. No. 388 of 2023 was rejected. Now the chargesheet is filed hence he has filed this second bail application.

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. 5 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. S. S. 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. 5. Heard Shri. K. V. Patil 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. The complainant has appeared and filed her objection at Exh. 4 and has raised strong objection. According to the prosecution the applicant is a habitual offender. He has committed the earlier offence vide Crime No. 514 of 2022.

10. To rely this argument the Ld. Adv. for the applicant has argued that the present applicant has love affair with the friend of the victim on whose say the present victim had gone to Islampur to take help from applicant accused and that was the only crime registered against the applicant.

11. It is argued by the Learned Advocate for the applicant-accused that the victim herself had gone to Islampur and met with the applicant-accused. As such no offence under Section 363 of the IPC is attracted.

12. It is further argued by the Ld. Adv. for the applicant that as per the allegations the applicant-accused had tried to go closure to the victim. According to the Ld. Adv. for the applicant it does not amount to an attempt to commit the alleged offence.

13. Ld. Adv. for the applicant relied upon the statement of the victim and medical report to support the said contention. On the basis of the medical report Ld. Adv. for the applicant has argued that there is no history of physical abuse.

14. On the other hand Ld. APP argued that the applicant has allegedly tried to go closure to the victim itself shows that he had intention to commit the serious offence as alleged. It is further argued by the Ld. APP that there is sufficient evidence available on record.

15. On perusal of record, it *prima facie* appears that the incident occurred on 29.3.2023, and applicant-accused came to be arrested on 30.3.2023, which *prima facie* goes to show that the investigation in the present crime has been completed and further custodial interrogation of the applicant-accused is not required to the police.

16. 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 Amir Sikandar Mujawar, be released on bail in Crime No. 237/2023, for the offence punishable under Sections 363, 354-A of the IPC and under Section 8 and 12 of the POCSO Act registered at Police Station Juna Rajwada, 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 proceeding.
 - (ii) **The applicant shall not enter in the vicinity/ village/area wherein the victim is residing and shall not**

enter in the vicinity wherein the victim is taking education till final disposal of this case.

(iii) 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.

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

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

Dt. 9.6.2023.

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