

MHKO010028712022



Order below Exh. 2 in Crim. Bail Appln. No. 175 of 2022.

1. This is second application filed by the applicant/accused Rohan Sandip Kole seeking bail under section 439 of Cr.P.C. in regard with Crime No. 367/2022, for the offence punishable under Sections 376 (I) (j) (n) of Indian Penal Code and under Section 3 (1) (w) (i) (ii), 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 4, 6, 8 and 12 of the POCSO Act registered at Police Station Karveer, Dist. Kolhapur.

2. Case of the prosecution in short as follows that the mother of the victim has filed the complaint against the present applicant alleging therein that on 1.6.2022 the victim left home at about 12 noon without intimating anybody as to where she is going. As she did not returned to home she and her family members searched victim but she could not be traced out. Then the complainant gave a call to the applicant and enquired about the victim, however, the applicant replied in the negative. Thereafter again the complainant made an attempt to call the

applicant, at that time the applicant disclosed that victim is with him and they returned at home at late night at about 1 a.m. That time complainant gave understanding to the applicant as well as the victim to keep away from each others.

3. It is further alleged by the complainant that thereafter on next day i.e. on 2.6.2022 the victim again left home without informing anybody. Therefore, the complainant went to the police station. Thereafter the victim came in the police station along with applicant. When the complainant enquired with victim, at that time she disclosed that the present applicant had sexually assaulted her forcibly from time to time. Therefore, as the victim is aged about 15 years and 8 months so also she belongs to SC community therefore, the complaint came to be lodged against the present applicant.

4. Thereafter the applicant was arrested on 2.6.2022. He was in PCR till 6.6.2022 since then he is in Jail. Earlier bail application bearing no. 630 of 2022 was filed by the applicant which was rejected by this court. Now the investigation is over and chargesheet has been filed. Hence, he filed this second bail application.

5. It is contended by the applicant that victim is having

love affair with present applicant since long. The parents of victim were opposing the victim girl as they are from backward community and the present applicant is from another caste. On this count they stopped her school and restrict her to go outside the house. The victim could not tolerate such confinement in the house and on her own wish she met the applicant stating that they should leave Kolhapur and reside elsewhere by performing marriage. The victim threatened the applicant that if he will not cooperate here then she will end her life by leaving chit. As there is no other alternative left for time being applicant joined the company of victim only to clam down her and she should return back to home. Accordingly, they both returned back to home. According to the applicant she has never kidnapped victim, nor there was forcible sexual relations between them. According to him, he is falsely implicated in the case. He is taking education and also doing part time job. He is having responsibility of his parents. He has no criminal antecedents. He has shown his readiness to abide with the terms and conditions if imposed by the court.

6. As the offence is filed under SCST Act notice was issued to the complainant and victim accordingly the complainant appeared in the Court and filed her say at Exh. 6. According to her she had given understanding to the applicant

on 2 to 3 occasions but taking disadvantage of minor age of the victim the applicant has kidnapped her and has raped her. It is also contended that the applicant's friends and his family members are threatening her son by name Shivaji Hegde to take back the complaint and therefore, there is danger to the life of victim and his family members. Therefore, she has raised the objection to the present application.

7. The Investigating officer has filed the reply through learned APP at Exh. 3 and has raised strong objection that the victim is minor and she is not understanding the consequences of any act. According to the prosecution the present applicant had established the forcible physical relationship under the pretext of marriage. The victim is under heavy mental pressure and trauma and has not come out of the fear and pressure of the accused. Hence prayed to reject the application.

8. Heard learned counsel for the applicant-accused, learned Addl.P.P. Smt. A. A. Patole 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 Ld. Adv. for the applicant that the victim is 15 years 8 months old and had attained the

understandable age. She herself was going with the present applicant with her own will, therefore, according to the applicant the offences under section 376 of the IPC and POCSO Act are not attracted.

10. Ld. Advocate for the applicant placed his reliance on decision in case of *Rohit Sukumar Sukate Vs. The State of Maharashtra and Anr. - Crim. Bail Apln. No. 127 of 2022 - Bombay High Court decided on 6.4.2022*, wherein the victim was 16 years and 6 months old, therefore, it was observed by his Lordship that she ought to be aware of the nature and consequences of the act. There were circumstances to indicate that there was no element of force or coercion at the instance of the applicant in having physical relations with the victim. In this referred case the medical report was showing that the applicant had even used protection (condom) during the relationship. The applicant accused was in MCR for about two years and six months. In this referred case the medical history given by the victim was showing that the relationship was consensual in nature.

11. Therefore, Ld. Adv. for the applicant has relied upon the medical report filed in the present case. Considering all these facts and understanding age of the victim I find that

guidelines given in the above referred judgment are helpful to the applicant.

12. Present applicant was arrested on 2.6.2022. Since then he is in MCR. The investigation is completed. Considering the entire documents on record and the guidelines given in the above referred judgment I find that no purpose would be served by keeping the accused behind bar for uncertain period.

13. The IO and Ld. APP has raised the apprehension of tampering of the evidence. The victim has raised the apprehension about the danger to her life. She has also contended about the threats given by the friend of the present applicant to take back the complaint. I find that the victim has not filed any supportive affidavit to her written reply. She has not given any complaint in the police station regarding the said threat. Therefore, I find that if the stringent conditions are imposed on the applicant it will take care of the above said apprehension raised by the Ld. APP, IO and victim.

14. 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 answered point No. 1 in the affirmative and proceed to pass following order :-

ORDER

- 1) The application is allowed.
- 2) The applicant-accused Rohan Sandip Kale, be released on bail in Crime No. 367/2022, for the offence punishable under Sections 376 (I) (j) (n) of Indian Penal Code and under Section 3 (1) (w) (i) (ii), 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 4, 6, 8 and 12 of the POCSO Act registered at Police Station Karveer, Dist. Kolhapur, on his furnishing P.B. and S.B. of Rs.30,000/- along with one or two sureties in the like amount, on the conditions that;
 - (i) 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.

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

(iii) The applicant-accused shall not leave the local jurisdiction of Kolhapur, without prior permission of the concerned investigating officer till filing of the chargesheet.

Dt. 16.9.2022.

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