

IN THE COURT OF SESSIONS JUDGE, KOLHAPUR
AT KOLHAPUR

Spl.POCSO Case No.82/2019
Exh.No. 5

Dattatray Bandu Gore
Age: 46 years. Occu: Agri labour,
R/o: Katyayani, Tal - Karveer
Dist.- Kolhapur.



Applicant/
Accused

Versus.

State of Maharashtra



Complainant.

ORDER BELOW EXH.5

1. This is an application under section 439 of Cr.P.C. for bail in connection with C.R.No 127 of 2019 registered with Radhanagari police station for the offences punishable under sections 376, 504, 506 of Indian Penal Code and section 4 of POCSO Act.

Brief facts of the prosecution case are as under :

2. Accused is the step father of victim. After death of the father of the victim her mother performed second marriage with applicant/accused. Since year 2013 accused repeatedly committed rape on victim. If she refused to keep physical relations, accused used to raise quarrel with the mother of the victim and threaten that he will spoil their life and commit suicide. From 2013 till lodging FIR accused and family of

victim shifted various places. Accused kept the victim at the house of his friend for her education. Thereafter he again came to reside at Kalamba. Victim shared said incident with class teacher and thereafter FIR came to be lodged against applicant/accused.

3. The applicant/accused filed present bail application on the ground that he is falsely implicated in the present case. The family of accused living in single room. It is highly impossible to commit any such act in presence of every one in the small room. Victim was having love affair and illicit relation with one Prithviraj Chavan. She used to chat with him, for which accused used to take objection. Which was dislike by the victim and on the say of her boy friend she falsely implicated the applicant/accused in the present case. Applicant/accused is sole earning member of his family. He has also taken care of education of victim. For education victim kept at village Chandol, Tal Kagal. In the present case charge sheet is already filed. Nothing is to be recovered from the applicant/accused, therefore, his continue custody is not required. He is ready to abide conditions imposed by the court. Hence, prayed for release him on bail.

4. Notice of the present bail application was issued to Radhangari police station. They filed their report, thereby strongly objected present application on the ground that, applicant/accused is step father of the victim. If applicant/accused is released on bail he may threaten the victim and her family members and tamper with the evidence

of prosecution. Hence, prayed to reject the application.

5. Heard Adv. Bajirao Patil for applicant/accused and APP Shri. Chavan for State.

6. After perusal of record, it is revealed that in the present case charge sheet is already filed. The victim is step daughter of applicant/accused. At the time of lodging FIR she was 15 years old. The allegation is that since 2013 applicant/accused repeatedly moving his penis on the vagina of victim and tried to insert his penis in her vagina. There is also allegation of penetrating sexual assault. The Advocate for the applicant/accused argued that there is no medial evidence. After perusal of medical papers, it is revealed that old healed hymen are seen. Position of hymen is 7 O'clock and 5 O'Clock, from which it is revealed that victim is subject to penetrative sexual assault.

The Advocate for the accused referred citation of Hon'ble Bombay High Court in **(2001)2 BOM.L.R. 875 Khemlo Sakharam Sawant Vs. State**. The facts of the citation referred are different from the present case. The said citation referred is not the case of rape and under the provisions of POCSO Act. Hence, the said citation is not applicable in the present case. The Advocate for the accused referred another judgment of Childrens' court of **State of Goa in BA No. 72 of 2019**. The said order is passed by the Sessions Court. The facts of that case is not similar to present case. In that case at the instance of boy friend of girl FIR came to be lodged. The

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order passed by the Childrens' court Goa cannot be president or binding to this court. In the present case the real father of the victim is died when she was in 5th standard and her mother performed second marriage with applicant/accused. The applicant/accused is earning member of their family. In the present case applicant/accused repeatedly committed heinous act of rape on the minor victim girl. Due to fear of applicant/accused victim kept mum of lodging FIR. The applicant/accused is in dominating position. He is step father of the victim. Considering relation between the victim and applicant/accused and considering nature of offence the citation referred by the applicant/accused are not applicable in the present case. Hence, I proceed to pass the following order.

ORDER

Bail application (Exh. 5) is hereby rejected.

'Pronounced in open Court '

Date: 08/06/2020

(Smt. S.R. Patil)
Addl.Sessions Judge-2, Kolhapur.

I affirm that the contents of this P.D.F. File Judgment/Order are same,word to word, as per the original Judgment/Order.

Name of the Stenographer	Sau. S.S. Gosavi
Name of Court	Addl. Sessions Judge-2 Kolhapur.
Date of Dictation	08/06/2020
Order signed by the P.O. on	08/06/2020
Order uploaded on	08/06/2020