

MHKO010038882022



Order below Exh. 4 in Spl. Case No. 219 of 2022.

1. This is second application filed by the applicant/accused Jivan Sanjay Waghmare seeking bail under section 439 of Cr.P.C. in regard with Crime No. 453/2022, for the offence punishable under Sections 363, 376 (2) (n), 506 of the Indian Penal Code and under section 4, 8 and 12 of POCSO Act registered at Juna Rajwada Police Station, Dist. Kolhapur.

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

Complaint is lodged by the complainant Sangita Amit Kamble contending that victim is her daughter. It is alleged that on 21.8.2022 his minor daughter went out of house but did not return to home. Hence she searched for her daughter but in vain. Hence she filed complaint with the police. However, on 25.8.2022 accused was arrested. During investigation it is transpired that the present applicant had kidnapped the minor victim though he was knowing that victim is minor and took her at Asurle Porle village and there established forcible physical relations with the victim though

knowing that she is minor. The police has recorded the statement of the victim. On the basis of statements the above said offences came to be applied in the said crime.

3. The applicant was arrested on 25.8.2022. He has filed earlier Bail application No. 893 of 2022 which was rejected. Hence, he has filed this second bail application as the police has filed chargesheet against him with the contention that the investigation is now completed.

4. 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.

5. The learned counsel for the applicant-accused has further submitted that the material 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. Pirjade elaborating the investigation, the investigating officer has raised objection to release the applicant-accused on bail.

7. The learned Addl.P.P. Shri. Pirjade has vehemently argued that the offence is very serious in nature and against a minor girl. 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. D. R. Kawale, learned counsel for the applicant-accused and learned Addl.P.P. Shri. Pirjade 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 17 years 5 months old i.e. she has attained the age of understanding. According to the applicant there was love affair between the applicant and accused since last more than 6 months and the victim on her own accord ran away from the house, therefore, according to the applicant the victim was the consenting party to the alleged act.

10. On the other hand it is argued by Ld. APP that the applicant has lured the victim and has taken her in its clutches and then eloped with her and had committed the illegal act though he was already married.

11. On perusal of the complaint and the statement of the victim it appears that the present applicant had forcibly taken her and while she was refusing for the same the applicant had threatened her to commit suicide if she does not go with applicant. She has also stated that the applicant has established forcible relations with her when she refused for the same the applicant had told her that he would get married with her. When she came to know about the earlier marriage of the applicant the present applicant has assured her that he would abort the child of his wife and would divorce her that time she came to know that the applicant's wife is pregnant. Even then the applicant has kept forcible physical relations with her. The statement of the victim sufficiently shows that she was not the consenting party to the alleged act.

12. Considering the peculiar facts of the case I find substance in the arguments advanced by the learned APP that the present applicant has given the false promise of marriage having the full knowledge since inception that he wanted to deceive the victim.

13. Though the investigation is completed and chargesheet is filed, it is well settled provision of law that the filing of chargesheet cannot be sole ground to allow the bail application. The applicant has not made any other sufficient ground to allow the second bail application. The offence is very harsher crime, serious in nature and against the minor victim. Therefore, in my view, the offence is serious in nature hence, I am not inclined to grant bail to the applicant-accused. Hence, the following order.

ORDER

Application stands rejected.

Dt. 15.11.2022.

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