

MHKO010038882022



**Order below Exh. 7 in Spl. Case No. 219 of 2022.**

1. This is third 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. Thereafter he has filed second bail application as the police has filed chargesheet against him with the contention that the investigation is completed. Said application was also rejected. Now the applicant has filed third bail application with the contention that there are some material things which were not brought on record in the earlier bail applications.

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. 10 through learned Addl.P.P. Smt. M. B. Patil elaborating the investigation, the investigating officer has raised objection to release the applicant-accused on bail.

7. The learned Addl.P.P. Smt. M. B. Patil 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. 10. Heard Shri. D. R. Kawale, learned counsel for the applicant-accused and learned Addl.P.P. Smt. M. B. Patil 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. Complainant i.e. mother of the victim has produced her affidavit at Exh. 8 and raised strong objection to release the applicant-accused on bail. She contended that there is danger to the life of her family and also to the life of victim. Accused is

hooligan person (*Gund*) and he is always threatening them. According to her the PSI of Juna Rajwada Police Station and she herself had given the understanding to the accused on two occasions, even then the accused is threatening them. It is also contended that the relatives of the accused are abusing them in filthy language by standing in their door. According to her, the relatives of the applicant are pressurizing them to withdraw the complaint.

10. 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.

11. 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.

12. 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.

13. 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.

14. It is argued by the Ld Adv for the applicant that the whatsapp chat between the applicant and the victim were not produced at the time of filing earlier bail application. It is the contention of the applicant that there was love affair between the complainant and victim. To support the contention the applicant has produced the screenshots of whatsapp chats between applicant-accused and victim. It is argued by the Ld.

Adv. for the applicant that from this whatsapp chat it appears that the victim had the knowledge that the applicant is married person. Considering the facts of the case I find that this defence cannot be considered at this stage.

15. It is further argued by the Ld. Adv. for the applicant that the victim is tutored person, therefore, by giving statement under Section 164 of Cr.P.C. she had stated that she want to give the statement in absence of her mother. However, on perusal of the statement of the victim under Section 164 Cr.P.C. it appears that she had gave statement that the applicant had kept forcible physical relations with her. Therefore, I find that the prima facie material is available against the applicant.

16. Another ground raised by the applicant that his wife is pregnant and his wife needs his company. To support this contention the applicant has produced the medical paper of his wife. However, considering the seriousness of the offence and as the prima facie evidence is available on record I find that the pregnancy of the wife cannot be the sufficient reason to release the applicant on bail.

17. 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 this bail application. Considering the affidavit filed by the complainant at Exh. 8 and considering the documents on record I am not inclined to grant bail to the applicant-accused. The offence is very harsher crime, serious in nature and against the minor victim. Hence this application is rejected. Hence, the following order.

**ORDER**

Application stands rejected.

Dt. 21.12.2022.

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