

MHKO010038882022



**Order below Exh. 13 in Spl. Case No. 219 of 2022.**

1. This is fourth bail 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. Thereafter 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. Said bail application was also rejected. Now he has filed this fourth bail application on change of circumstances.

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. 17 through learned Addl.P.P. Smt. P. J. Jadhav elaborating the investigation, the investigating officer has raised objection to release the applicant-accused on bail.

7. The learned Addl.P.P. Smt. P. J. Jadhav 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. 17. Heard Shri. K. V. Patil, learned counsel for the applicant-accused and learned Addl.P.P. Smt. P. J. Jadhav 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. 18 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. It is contended by the complainant that her husband is plying rickshaw. While her husband was on rickshaw the relatives of the applicant time and again obstructing him and threatening him to withdraw the complaint, therefore, there is danger to the life of her husband.

10. Earlier three bail applications filed by the applicant were rejected on merit.

11. Ld. Adv. For the applicant has relied upon decision in case of **Sanjay Kumar Vs. State of West Bengal – Aironline 2022 Cal 255**, wherein it is held that, *“Principles analogous thereto do not apply in proceeding seeking bail. Accused can apply for bail and renew his prayer for any number of times. Every additional day's detention gives accused fresh right to seek bail. There is no bar for accused for renewal of his prayer for bail on self same bundle of facts.”* Considering the guidelines given in this judgment it cannot be said that present application is not maintainable on the same set of facts.

12. Ld. Adv. for the applicant has relied upon decision in case of **Ashik Ramjan Ansari Vs. The State of Maharashtra – Crim. Appeal No. 1184 of 2019 – decided on 10<sup>th</sup> July, 2023** has held that -

“Merely because the statute provide punishment for an act of sexual indulgence, as the girl has not attained the age of maturity i.e. 18, when it can be specifically inferred from her conduct that she was capable of understanding the consequences of her act, I am of the opinion that the learned Special Judge has erred in convicting the appellant for committing the offence of rape under Section 376 of the IPC as well as the offence under Section 4 and 6 of POCSO Act and awarded him the sentence in impugned judgment.”

13. On the basis of the guidelines given in the above referred judgment in the case of *Ashik Ansari* (Supra) it is argued by the Ld. Adv. for the applicant that the findings given by the Hon'ble High court and observations therein is the change in the circumstances and therefore, according to the Ld. Adv. for the applicant the applicant is entitled for bail.

14. Facts of the present case and above referred case of *Ashik Ansari* (cited supra) are altogether different. The said judgment given by Her Ladyship is on merits after considering the entire evidence on record. Whereas in the present case the applicant is seeking bail at pre-trial stage. Therefore, in my opinion with due respect the said case law is not helpful to the applicant at this interim stage.

15. Ld Adv. for the applicant has further relied on the decisions in cases of -

**1. Ritesh Ravindra Landge Vs. State of Maharashtra and others – 2022 DGLS (Bom.) 1880.**

**2. Omeshkumar Vipinkumar Singh Vs. State of Maharashtra and others – 2022 DGLS (Bom.) 4574.**

**3. Abhinay Sood Vs. State of Himachal Pradesh – Aironline 2023 HP 293.**

I have gone through the above said case laws. The facts of the referred cases and facts of the case in hand are altogether different. Hence, in my opinion with due respect the above said cases are not helpful to the applicant.

16. Earlier three bail applications were rejected on merits. The applicant has not shown any new ground to allow this application. 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. Considering the affidavit filed by the complainant at Exh. 18 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. 1.9.2023.

(Smt.P.F.Sayyad)  
Special Judge (POCSO),  
Kolhapur.