

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, KANDHAR
Spl.Case No.11/2022
State of Maharashtra Vs. Ahemad Babumiya Shaikh
CNR NO. MHND210001682022
Order Below Exh.9
(Passed on 12-09-2022)

1] Applicant/accused Ahemad Babumiya Shaikh has filed application for regular bail u/sec. 439 of Cr.P.C., of the offence punishable u/sec. 354(d) of I.P.C., 11,12,14,15 of Protection of Children from Sexual Offence Act and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in crime No.07/2022, police station, Sonkhed.

2. Perused application, say and case papers.

3. Ld. Advocate for applicant/accused submitted that, after charge-sheet it is his first bail application. FIR lodged belated of 24 hours without explanation. He is the final year Engineering student and languishing behind bar without any fault since 12-01-2022. Charge-sheet submit before Court on 28-02-2022 but till date trial could not commence. No evidence found on record against him. Previous one crime lodged against him for the same incident and in that crime he was released on bail. Thereafter, immediately, another FIR i.e. present FIR again lodged against him by levelling another serious section. In the earliler matter also charge-sheet submit in the Court. Nothing remains to seize from him as already mobile seized in that earlier matter. It is not

just and proper to keep him behind bar for uncertain period like hard core criminal. He is permanent resident of Dahikalamba having landed property. Hence, there is a least possibility for absconding. His residence is difference from the resident of victim. Hence, no possibility for tampering. Lastly, prayed for grant of bail.

4. Ld. APP Shri M. B.Kagne for prosecution objected the bail application of present accused on the ground that, already one crime have been registered against him for the same incident. During his bail period, he has committed another offence. It shows, he is habitual to commit such type of offence. It is subsequent offence and serious in nature. Though charge-sheet submit, he does not show any change in circumstances. Lastly, prayed to reject the bail application.

5. At the outset, I would like to peruse statement of brother and father of victim, which were recorded under Section 164 of Cr.P.C. charge-sheet submit before Court, therefore, we can peruse all relevant documents. As per the statement of brother of victim, accused Ahemad used to harass them by pelting stones on their house. He has also given threat to viral obscene videos and photos of victim and given threats through messages on mobile. He has uploaded videos and photos on his whatsapp. Thereafter, his father lodged complaint against accused.

6. As per the statement of father of victim, on 13-06-2021 accused Ahemad committed rape on his daughter, therefore, he has lodged case against him. He released on bail and told him to talk with his daughter only once, else he will kill everybody in his family. Thereafter, again accused made a call on his whatsapp and given threat that he will sent obscene photos on the mobile of his son. Thereafter, on 11-01-2022 he has lodged complaint against accused.

7. In the context of statement of brother and father of victim, it made clear that both does not corroborated with each other. Hence, it became necessary to peruse statement of victim. As per her statement on 11-01-2022 accused was present in the neighbourer house and was pelting stones on her house. He has given threat to her father on phone to kill. He has sent her videos on the mobile phone of her elder brother and given threat to viral her video. Thereafter, her elder brother lodged complaint agaisnt accused.

8. Considering the statement of victim, she is completely silent on the point of incident of rape dated 13-06-2021 which is narrated by her father. Not only this, her father stated that, he has lodged FIR on 11-01-2022, whereas, she has stated that her elder brother has lodged the said FIR on the said date. More or

less, victim , her elder brother and her father have stated different stories in their statement, which are not consistent with each other.

9. I would like to mention here that, if rape committed by the accused on victim as per the statement of her father, then she must have examined medically but in this matter in hand, no such medical papers filed on record. Therefore, it is hard to rely on the point of rape. However, it is the matter of merit to ascertain the involvement and role of accused. But, at present I do not find any justifiable reason to reject his regular bail. Apprehension of prosecution for tampering or absconding can taken care by imposing harden conditions on him. Hence, I pass following order ;

ORDER

1. Regular bail Application (Exh.1) hereby allowed.
2. The applicant/accused - Ahemad Babumiya Shaikh be released on regular bail of the offence punishable u/sec. 354(d) of I.P.C., 11,12,14,15 of Protection of Children from Sexual Offence Act and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in crime No.07/2022, police station, Sonkhed on his executing bond of Rs.15,000/- with one surety in the like amount with the conditions that:-
 - a] He shall not meet or pressurize with the informant and prosecution witnesses.

- b] He shall not leave Nanded District without prior permission of the Court.
- c] He shall attend the Court dates regularly.
3. The breach of above conditions shall lead to the cancellation of bail.
4. Bail before concern Court.
5. Hamdast allowed.

Kandhar
Date :- 12-09-2022

(Madhuri Anand)
Additional Sessions Judge-1,
Kandhar

Dictation started on p.m.
Dictation concluded on p.m.

Note :- Argument of both parties heard on 22-08-2022 and kept for citation but till 12-09-2022 no citation filed and order passed on same day.

CERTIFICATE

I affirm that the contents of this PDF file order are same, word to word, as per the original order.

Name of stenographer	Balkrishna Kulkarni
Name of Court	District Judge-1, Kandhar
Date of Dictation	12-09-2022

Order signed by the P.O on	12-09-2022
Order uploaded on	13-09-2022