

**Order below Exh.3 in Spl (Pocso) case No.22/2024.**  
{ Sahebrao Nivrutti Khandare Vs. State }

This is an application under section 439 of the Criminal Procedure Code for grant of bail after filing of charge-sheet.

Applicant-accused is arrested on 2.12.2023 in CR I-307/2023 registered with Trimbakeshwar Police Station under section 364-A of the Indian Penal Code and U/s. 8 of POCSO Act.

2. Heard both the sides. Perused the application and say of state.

Accused is 50 years old labourer. The victim is 12 years old. On 30.11.2023 the parents of the victim had gone for labour work. She was alone when the accused at 1.00 p.m. came in the Angan (open space) to eat food. He asked for water and onion from the girl. After some time the girl wanted to go to play with her friend, so she was locking the door when the accused touched her, lifted her, embraced her and pressed her breast. Thereafter, again at 4.00 p.m. when the girl was alone in her outside room, the accused came and seen she is alone he started pressing her shoulder and parts of body.

3. Ld. APP has submitted that taking advantage of the minority and that she was alone, accused has twice outrage her modesty and committed sexual assault. He is 50 years old and she is 12 years old. He will not remain present for trial, if released.

Ld. APP has further submitted that, charge is framed the witness can be examined at the earliest. The age difference that of accused and victim is vast.

4. Ld. Advocate for the applicant-accused submitted that earlier bail application was rejected as investigation is not over and statement U/s. 164 of Cr.P.C. was yet to be recorded. Now

investigation is over and statement U/s. 164 of Cr.P.C. also recorded. It is submitted that, from the birth certificate produced by prosecution, the date of birth is 6.12.2010, thus the age of the victim is 13 years. She is not 12 years or below 12 years. So also there is difference in the statement U/s. 164 of Cr.P.C. of the victim and that of the complaint. In her statement U/s. 164 of Cr.P.C. mentioned that he gave him rice and onion. The statement to the police by complainant mentions she gave water and onion. It do not mention specific touch to part of body as in the compliant. It only mentioned that he touch her in front and anywhere. It is further submitted that, the offence is not punishable more than 7 years, even if it is taken to the aggravated sexual assault U/s. 9 of the POCSO Act. There is no criminal antecedent. Accused will remain present for trial. The accused and victim are not residing in the same village.

Ld. Advocate for applicant relied upon the judgment of **Satender Kumar Antil Vs CBI 2021, STPL SC page 10948** and **Indrajit @ Kamal Vs State of Harayana, 2016, (5) RCR (Cri) 500**. It is fit and proper to grant bail then maximum punishment is below 7 years.

5. It is seen that present offence is punishable with imprisonment of 7 years. The investigation is over. The presence of accused can be secured for trial. Hence, it is fit and proper to grant bail. Hence, the following order.

### **ORDER**

1. Bail Application Exh.3 is hereby allowed.
2. Applicant-accused be released on bail on executing a PR of Rs.25,000/- with surety in like amount in connection with the CR I-307/2023 registered with Trimbakeshwar Police Station under section 364-A of the Indian Penal Code and U/s. 8 of

POCSO Act..

3. He will attend the police station on 3<sup>rd</sup> Saturday of every month at 10.00 a.m. till completion of trial.
4. He will provide his address and phone number to the police and Court.
5. He will not contact the victim in any manner and pressurize victim and witnesses.
6. Copy of this order be sent to the Superintendent, Central Jail, Nashikroad, Nashik by email for necessary information.

Date: 30.03.2024.

( Smt. Priti Kumar Ghule )  
Additional Sessions Judge-5,  
Nashik.