

Order below Exh.2 in Spl. (pocso) case No.132/2024.
{ Ganesh Dilip Jadhav Vs. State }

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

2. The applicant-accused is 38 years old arrested on 9.3.2024 in CR I-48/2024 registered with Deola Police Station, Tal. Deola, Dist. Nashik under section 363, 376, 376(2)(j), 376(2)(n) of the Indian Penal Code and sec. 4,6 of the POCSO Act. Earlier Bail application No.565/2024 was rejected.

3. Perused the application, say of I.O. and charge-sheet. Heard both the sides. Perused say of original complainant, has objection for bail.

4. Applicant-accused is 38 years old, married man with two children and Government servant, working as Talathi. The accused is also cousin brother of the victim's mother. The victim is 17 ½ years old girl. On the pretext of field work the accused would visit the house of the victim, some times he would also stay over night in the house of complainant. Being relative, the parents of victim were cordial with accused and showed hospitality to the accused who would come as guest. The accused secretly gave a mobile phone to the victim. The accused has established forcibly sexual relation with victim, knowing that she is minor. He had took her 2-3 places and committed sexual offence of rape.

On 6.3.2024 the mother of victim found the victim was having mobile phone and confronted her about the mobile phone and who gave her phone. The victim thereafter was missing from house. The

parents gave complaint on 7.3.2024 that the girl is missing. On 8.3.2024 the accused in the early morning dropped the victim to her house. The victim then disclosed about forcible sexual relation with her by the accused from time to time.

5. Ld. Advocate for accused submitted that victim is having age of understanding, she is above 17 years old and couple of month short for 18 years of age. The victim and the accused had love relation. It is submitted that there are messages exchange between both to show that, there was love affair. The accused is in jail, has lost his job. He has wife and children to maintain, will abide with terms and conditions. He do not have any criminal antecedent. He will attend the trial. The Hon'ble Bombay High Court in the case of **Sunil Mahadev Patil V/s. The State of Maharashtra, 2016 ALL MR (Cri) 1712**, has held that the matters of love relation bail should be granted.

6. Ld. APP has submitted that accused is married man with children and he is the government servant, 38 years old. The victim is below 18 years of age and a child U/s. 2(d) of POCSO Act. There is vast age difference. He is married man, 21 years elder to her. The judgment of Hon'ble High Court in the case of **Sunil Mahadev Patil V/s. The State of Maharashtra, 2016 ALL MR (Cri) 1712** is applicable to the love affair between young, adolescent age, teenage youth. In present case, there is no love relation but it is the lust of accused on minor girl of the host. The accused on duty was visiting the house of victim as a relative and he has taken disadvantage of her age of minority and trapped her, established forcibly sexual relation with her more than once. The offence is heinous against minor, severely

punishable with life imprisonment.

7. Ld. Advocate for the accused submitted that, victim was having the mobile phone from her parents. There are chat messages between accused and victim to show that she voluntarily was involved. After the mother discover the phone with her, she left the house voluntarily and went to her friends house. She herself phoned the accused from the phone of her friend and called him by giving threat to harm herself. Accused has not kidnapped her. There is no allurements by accused for her to leave the house. She is not below 16 years of age and has understanding. There is no necessity to keep the accused in jail when prima facie the love relation is evident.

8. Ld. APP submitted that, the accused came to take the victim at the house of her friend and instead of leaving home, he took her to lodge, established sexual relation by force and then dropped her back home. The accused is the married man with children and holding the post of Talathi. He is well aware about what moral turpitude is. Government servant cannot engage in illicit acts as well as sexual offences. The accused has been visiting the house of the victim's parents on the pretext of field work. He was also having over night stay in the house. He has taken advantage of the minor girl who is the daughter of the host. The accused was well aware that he had a wife and a child. In no manner he can ever think of second marriage when first marriage is in existence. There is no question of the victim girl voluntarily engaging in sexual relation with married man who is 21 years elder to her. I find there is substance in the arguments of prosecution. I also accept that, this is not a love relation between young persons but this is a case of satisfying lust by 38 years old

Government servant on 17 years old minor girl.

9. It is seen that accused, cousin brother of victim's mother was coming in Skoda car to the house of complainant. He was enjoying the hospitality at the house of victim. It is he who has entered into the house of victim and by taking disadvantage of relation and showing off, his post he has established sexual relation with the minor girl in her own house. It is he who has expressed his liking for her and had forcibly caught hold and when other persons in the house were sleeping, he established sexual relation with her and pressed her mouth to prevent her from shouting. This fact is mentioned in the statement U/s. 164 of Cr.P.C. wherein he also threatened her not to disclose anything about sex by him. Thereafter, he gave her mobile phone in the month of January and threatened that if she do not accept, he already has her video which he will show to everyone. He thereby forced her to keep the mobile phone. She has further stated in her statement U/s. 164 of Cr.P.C. when the exams in her college going on he would call her after the paper, make her seat in the car and take her to the Satbara Lodge at Satana road and established sexual relation with her forcibly.

It has come in the statement U/s. 164 of Cr.P.C. after her mother saw the mobile phone with her, she informed about it to the accused, he came to keep her at her friends house but instead of dropping her home he took her to the Malegaon in the Sai Jatra Hotel, tortured her and again forcibly established sexual relation against her wish. Thereafter, he left her home. She disclosed everything to her parents and she has also stated in her statement U/s. 164 of Cr.P.C. that accused should be punished to the maximum.

From her statement U/s. 164 of Cr.P.C. it clear that she do not

accept about love relation with accused but she has repeatedly stated that, he has forcibly established sex with her. In these circumstances, the submission that, accused is innocent, it is love affair from both the sides is not accepted.

10. The victim girl is below 18 years of age and was easily trapped by the Accused a government servant, who has to protect the minor children and not exploit them sexually. Accused 38 years old man contends of love relation with 17 ½ year old minor girl. It is seen that, accused is matured person, he is having a wife, well aware that, he is holding public post in government service. He is aware that, moral turpitude is serious offence. The accused has repeatedly, forcibly established sexual intercourse with her only to satisfy his lust, is seen prima facie. The offence is severely punishable. There is not reason to disbelieve the statement U/s. 164 of Cr.P.C. of the victim girl in which she has repeatedly stated that, accused has forcibly established sexual relation with her in her house and by taking her to lodges.

It is seen that accused is affluent, influential person and can easily tamper with the witnesses and evidence and prevent them from deposing against him. Original complainant has already filed pursis that unknown persons on behalf of accused and his family are contacting them to convince them to withdraw the case or they have to face the consequences. The marriage of the girl in future not take place if the case is not withdrawn.

Ld. APP has also submitted that, the witnesses are available and the trial can be commence at the earliest. In my view, there is possibility of pressurising the witnesses by the accused who is

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government servant and his family members, in order to save the accused and his job. This is not a fit case to grant bail. Hence, following order.

ORDER

1. Bail Application Exh.2 is hereby rejected.
2. Inform to concern police station.

Date: 15.06.2024.

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