



Order below Exh.3 in
Sessions Case No.185/2019.
{ State Vs. Shahid Khan Ismile Khan }

This is second bail application after filing of the charge sheet moved by the applicant/accused under section 439 of the Criminal Procedure Code for enlarging him on bail in Crime No.75/2018 registered at Malegaon City Police Station, District Nashik for the offences punishable under sections 363, 366-A, 376 (1) of the Indian Penal Code and sections 4 and 8 of the Protection of Children From Sexual Offences Act.

2. Perused the application, say at Exh.5 and the charge sheet. Heard the learned advocate for the applicant and the learned A.P.P. for the State.

3. The learned advocate for the applicant argued that the applicant is falsely implicated in this case for taking revenge as the accused went with his maternal cousin sister and lodged the report against Maksood Liyakat, maternal uncle of the present complainant's and crime No.212/2018 came to be registered against him on 28.11.2018. It is argued that there is inordinate delay of 7 to 8 months in lodging report. It is submitted that investigation is over and the charge sheet is filed. It is submitted that old parents, wife and children are dependent upon applicant and he is only earning member of his family. It is submitted that no offence is made out in the statement of complainant recorded under section 164 of the Criminal Procedure Code. It is submitted that the

medical report of the accused shows that his penis is not normal and it is short and how, he could commit rape. It is submitted that there is variance in the statement of the victim in respect dates of committing rape on her at Manmad and Chalisgaon. The learned advocate for the accused placed his reliance on the ruling in the case of *Satyam Ramchandra Fulore Vs. The State of Maharashtra reported in 2015 All MR (Cri.) 2785*. In the circumstances, urged to enlarge applicant on bail.

4. On the other hand, the learned APP for the State argued that the victim is 17 years old. Moreover, the applicant and victim are resident of same village and there are chances of tampering the prosecution evidence. It is submitted that there is ample evidence against applicant which shows his involvement in the commission of serious offence against the minor. However, under threat the victim could not disclose about the incident to her parents. It is submitted that interim application for anticipatory bail was granted by the Hon'ble High Court and finally it came to be rejected. Thereafter, the applicant fled away and he came to be arrested from Rajsthan. It is submitted that the investigating officer has collected the relevant record of the lodge at Chalisgaon and at Manmad which shows that the accused had been to the lodge with one woman i.e. victim. It is submitted that if he is enlarged on bail, there are chances of fleeing the applicant. Hence, urged to reject the application.

5. There is substance in the arguments advanced by the learned APP. Prima-facie the victim is minor girl aged about 17 years. Prima-facie there is ocular as well as medical evidence on record. Prima-facie evidence shows that the victim was raped by the

applicant. Evidence on record also shows that when the anticipatory bail came to be rejected by the Hon'ble High Court, instead of surrendering to the police station, the applicant fled away to Rajsthan, and therefore, there are chances of absconding the applicant. I do not find any substance in the arguments advanced by the learned advocate for the accused about incompetency of the accused to have sexual intercourse. The reason is that the arrest panchanama itself discloses that he is having wife and children. Moreover, the offences are serious and custody of the applicant is required for fair trial. There is no change in the facts and situation. The facts and circumstances in Satyam's case cited supra are different than the case in hand and the ruling is not helpful to the accused. Thus, I pass the following order.

ORDER

Application is hereby rejected.

14th November, 2019.

(B.S. Mahajan)
Additional Sessions Judge-2,
Malegaon, District Nashik.