

**In the Court of Extra Joint District Judge and Additional Sessions
Judge, Malegaon, Dist. Nashik.
Session Case No. 185/2019**

State of Maharashtra,
Through City Police Station,
Malegaon.

..Complainant.

Vs.

Shahid Khan Ismail Khan, Age 38 yrs.
R/o. Abdul Khaliq Nagar, Kusumba rd.
Malegaon.

..Accused/Applicant.

Order below Ex. 11

1. Read application filed by accused at Ex.11 and say of learned A.P.P. to it at Ex.13. Heard both the sides.
2. This is a third consecutive bail application so filed by this accused u/sec. 439 of Cr. P.C.,1973, to release him on bail in connection with this offence C.R. No. 75/2018 registered against him at Malegaon City Police Station, for all such offences punishable u/sec. 376(1), 363, 366-A of I.P.C. and u/sec. 4 and 8 of Protection of Children from Sexual Offences Act, 2012.
3. Advocate for accused submitted that, this is a total false case against this accused and almost two years have passed, but there is no progress in this case, as far trial is concerned and then, this accused is the only earning member in his family and his father is an aged person, with ailments and, further, in the absence of accused, there is no one to look after his family and he is a sufferer for all such fictitious charges levelled against him, in this case. He submitted that, this accused is in jail for such a period of two years and considering the pandemicity of Covid-19, his life

is also in danger, for there being no safety to take care of his health. He drew my attention to the complaint made by the minor-victim on 03.12.2018 and her supplementary statement recorded by police on 08.12.2018 and then, submitted that, there are lot of inconsistencies in her statement, for which the complaint itself can not be believed at all. He submitted that, it is highly impossible that this accused would commit such repeated sexual acts of raping her on four times within such a period from 28.06.2018 till last 03.12.2018. He submitted that, there is no authentic record of this minor-victim being the same person, looking to her birth certificate and name of minor-victim is something different than that as so appearing in her birth record viz. the birth certificate dated 12.02.2021, which shows her name to be "Sadak" and then, he submitted that the mother of complainant was not having any such two daughters, firstly minor-victim and then, this another daughter namely "Sadak" and therefore, that itself falsifies the case of prosecution. He, further, submitted that, even in the medical certificate dated 08.12.2018, the Medical Officer has expressed possibility of intercourse and there is no external injury on any part of her body as may show that, at any time of alleged incident, she resisted accused to avoid the alleged acts of rape and that also falsifies the case of prosecution. Advocate for accused also drew my attention to the xerox copy of a money transaction between this accused and the mother of minor-victim and submitted that, there were monetary disputes between the mother of minor-victim and this accused and, therefore only, at her instigation and in order to avoid the payment of money, such a false case came to be made against this accused. He drew my attention to a xerox copy of an agreement dated 20.08.2018 between accused and the mother of minor-victim It is submitted that this Court may please grant this application for bail, even by imposing

stringent conditions, but then, this accused should be released on bail.

4. On the other hand, learned A.P.P. strongly opposed this application with a submission that, this accused has committed such a serious offence of rape on a minor-victim not only once, but repeatedly in a period of last 5 to 6 months before her such complaint and that, this accused remained absent for a period of 9 months, even after obtaining interim anticipatory bail in the High Court, Bombay and that itself, would show his own conduct as to how he is regardless of the orders of the Honourable High Court. He, further, submitted that, there are no change in circumstances and whatever grounds are now raised in this application, are also raised by advocate for accused in his previous bail applications and they all were discarded by the predecessors of this Court as well even by the Honourable High Court, Bombay in a last bail application so made by him, being Criminal Bail Application No. 1485/2020, on 17.02.2021. He submitted that, if this accused is so released on bail, he would tamper with prosecution evidence and would also intimidate the complainant and her mother and other relatives and, therefore, he has a request for rejection of bail application.

5. After hearing both the sides, this Court has perused the entire record of this case. There is a long standing history of bail applications, so made by this accused from time to time, in this Court as well in the Honourable High Court, Bombay. Briefly, the first bail application so moved by this accused was the anticipatory bail application, made before Honourable High Court, Bombay, being Anticipatory Bail Application No. 75/2019, decided by Honourable High Court on 02.05.2019, granting him interim protection by ordering him to be released on bail on furnishing P.R. of

Rs.20,000/- with solvency in the like amount. However, it appears from the record that, he failed to appear before the police and then, police arrested him from Ajmer, State Rajasthan and then, sought his custody to bring him to Malegaon on 06.08.2019. Thus, it can be seen that, right from the date of complaint dated 03.12.2018 till his arrest on 06.08.2019, he was not in the custody of police for the investigation of the offence. Then, he moved the first bail application before this Court, by making an application at Ex. 03 and my learned predecessor rejected his that bail application on 14.11.2019, by passing elaborate order. The second bail application came to be moved by this accused at Ex.07 and it also came to be rejected on 08.07.2020. Not only that, he made one another application before the Honourable High Court, Bombay being Criminal Bail Application No. 1485/2020 and it also came to be rejected by His Lordship on 17.02.2021.

6. Now, whatever grounds are so raised by advocate for accused in this application, if gone through thoroughly, it can be seen that the same grounds, whatever raised by him in earlier bail applications are now again raised here and they all came to be rejected by passing appropriate orders against this accused by my learned predecessors and I, further humbly note that His Lordship, in para No. 7 of the bail order dated 17.02.2021, has rejected all such contentions of this accused, observing no such grounds raised by this accused to have any bearing on the present case as far his request for releasing on bail is concerned. The learned A.P.P. has rightly raised a contention that there are no change in circumstances warranting reconsideration of any such request, so made by this accused for releasing him on bail is concerned and I find that, this accused is repeatedly raising all those contentions again and again just to detract the

further progress of this case and simply to get released on bail by making any submission one or the other. I do not find any force in the submission so made here on his behalf and the application itself is without any merit.

7. In order to avoid any repetition of the same facts, I would briefly state here that the offence is serious and this accused has committed heinous acts of raping a minor girl in such period from 28.06.2018 till the date of complaint on 03.12.2018, by taking her to a lodge at Manmad and Chalisgaon and whatever grounds are now, tried to be raised by advocate for accused as to inconsistency in the statement of minor-victim, are not much relevant at this stage, when there is a strong prima facie case against this accused and then, previously also, his all such bail applications came to be rejected.

8. Any discrepancy in the record of prosecution as to name of this minor-victim in her birth certificate, is also irrelevant, as much the victim has given her own statement before the learned Magistrate u/sec. 164 of Cr. P. C. on 21.12.2018 and even, her mother has also given the same kind of statement on 21.12.2018 and that itself is seriously indicative of all the charges, so levelled against this accused in this case. The application is without any merit. The previous conduct of this accused is also unrecognizable as he was avoiding his arrest for a long time in the past. Looking to all such facts and circumstances on record, the application is without any merit and, therefore, in the interest of justice, it is rejected.

Place : Malegaon.
Date : 25.08.2021.

(S.C. Magare)
Extra Joint District Judge and
Additional Sessions Judge,
Malegaon.