

MHNS070020562019

S. C. No. 185 of 2019

The State of Maharashtra
Vs
Shahid Khan Ismail Khan

ORDER BELOW Exh.19
(Passed on 04.12.2023)

01] This is successive application for bail under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to accused in connection with C. R. No.75/2018 registered at City Police Station, Malegaon, for the offence p/u/s 363, 366-A and 376(1) of the Indian Penal Code and Section 4 and 8 of the POCSO Act.

02] Ld. APP for the State appeared for the State/Respondent and opposed the application by filing written say of I.O. at Exh.21.

03] Notice of this application was also issued to the informant/victim. She appeared through her Ld. Advocate and opposed the application by filing her written say at Exh.25.

04] Heard, Shri. A. N. Shaikh, Ld. advocate for the accused, Shri. S.K. Sonawane, Ld. APP for the State/Respondent and Shri. S. B. Akkar, Ld. Advocate for the informant/victim. They argued vehemently.

05] Ld. Advocate for the accused submitted as under :-

At the time of alleged incident the informant/victim was 17 years old. Therefore, she was having age of understanding and knowing all consequences. After magisterial custody bail applications were filed on behalf of accused, however those are rejected. Bail application filed before the Hon'ble High Court of Judicature at Bombay is also rejected

on 17.02.2021. The accused is in Jail since 04.08.2019. For more than four years the accused is in Jail and there is no progress in the case. In changed circumstances the accused is filing this bail application. In the FIR itself it is stated that the informant/victim herself accompany accused time to time. There is delay of six months in lodging report. FIR is an afterthought. In the mean time the informant/victim was demanding money from accused and as accused could not fulfill the said demand she lodged FIR containing false allegations. Informant/victim herself was insisting accused to marry with her and she herself pressurize the accused to take away her. Nothing is to be recovered from the accused. No purpose would be served in keeping him behind the bars. The accused is having permanent residence. He is ready to abide all terms and conditions of bail. He will not abscond. He will co-operate the I. O. for further investigation, if any. Therefore, regular bail be granted to the applicant-accused.

06] On the other hand, the Ld. APP for the State and Ld. Advocate for informant submitted as under :-

All earlier bail applications filed on behalf of accused are rejected on merits. The bail application filed before the Hon'ble High Court of Judicature at Bombay is also rejected on merits. Thereafter, the Writ Petition filed for discharging the accused is also rejected by the Hon'ble High Court by observing that the accused can move application for discharge before the Sessions Court. All earlier bail applications are decided on merits and there is no change in circumstances, therefore, the present bail application is also liable to be rejected. Already charge is framed against accused and prosecution is ready to conduct trial on day to day basis. The applicant-accused has played active role in committing offence against minor girl. If bail is granted, there is every possibility of accused pressurizing the informant/victim and witnesses. Further accused may commit more serious offence like killing the

informant/victim. Therefore, the bail application should be rejected.

07] Admittedly charge-sheet filed against accused is in respect of offence p/u/s 376(1), 363, 366-A of the Indian Penal Code and Sec. 4 and 8 of the POCSO Act. Record shows that all earlier bail applications filed on behalf of the accused are rejected on merits by the concerned Addl. Sessions Judge and the Spl Court. All these applications were filed after the filing of charge-sheet and those were rejected on merits.

08] Record further shows that bail application filed before the Hon'ble High Court of Judicature at Bombay i.e. Cri. Bail Appln. No.1485 of 2020 is rejected vide order dated 17.02.2021. The said bail application was moved after the filing of charge-sheet and it has been rejected on merits by the Hon'ble High Court. After going through the said order of the Hon'ble High Court, it can not be said that any liberty was granted to the accused to file fresh bail application before the Sessions Court.

09] Copy of order dated 20.06.2023 passed in Criminal Writ Petition No. 295 of 2023 by the Hon'ble High Court of Judicature at Bombay shows that the said Writ Petition was disposed of by making certain observations in para No. 3, 4 and 5 of the order. Para No.4 of the said order reads as under :-

“ 4. It is the settled position of law that, defence of an accused cannot be adjudicated in Writ Jurisdiction and it is for the accused to establish his defence by leading cogent evidence before the Trial Court at the time of trial.

In view of the above, we are of the considered opinion that the present Petition is misconceived and is accordingly disposed of by reserving the remedy of the Petitioner to file an Application for discharge before the Trial Court and or to contest the trial of S. C.

No.185/2019 arising out of the C. R. No. 75/2018 registered with Malegaon City Police Station, District Nashik.”

Para No.6 of the said order of the Hon'ble High Court reads as under :-

“6. In view thereof, we direct the learned Additional Sessions Judge/Special Judge (under POCSO Act) to commence the trial of the Petitioner in Sessions Case No.185/2019 arising out of the C. R. No.75 of 2018 registered with Malegaon Police Station, as early as possible”

10] Record further shows that on 25.07.2023 the charge is framed against accused at Exh.16 and the matter was fixed for fixing the date of commencement of trial. However, the present application for bail came to be filed on behalf of accused. It is to be noted that concerned earlier bail applications filed on behalf of the accused including the bail application decided by the Hon'ble High Court of Judicature at Bombay were filed after the filing of charge-sheet and those are rejected on merits. As the Hon'ble High Court has not granted any liberty to the accused to again file application for bail before the Sessions Court, it would not be proper for this Court to consider this bail application and decide it on merits as there is no change in circumstances.

11] Today, Ld. Advocate for the accused orally submitted that the physical condition of accused is becoming very weak and his Hemoglobin is very less, therefore he has got knowledge that the accused may be shifted by the concerned Jail authority to the J. J. Hospital, Mumbai for further medical treatment. So far as this submission is concerned, Ld. Advocate for accused can file separate application for bail to accused on medical grounds supported by an affidavit of close relative of accused and medical documents. So far as

the present application is concerned, in it nothing is pleaded or submitted about grant of bail to accused on medical grounds. As such, the application is to be rejected. Hence, I pass the following order.

ORDER

1. The application is rejected.
2. The accused is at liberty to file application for bail on medical grounds, if any.
3. Inform accordingly, to the D.G.P./P. P., the concerned Jail Authority and Police Station Officer of concerned Police Station.

(Soft copy of this bail order be sent to the concerned Jail Authority through E-mail for providing its copy to the accused.)

Date- 04/12/2023.
Malegaon.

(K. R. Patil)
Addl. Sessions Judge, Malegaon.
Dist. Nashik.