

MHNS070020562019

S. C. No. 185 of 2019



The State of Maharashtra

Vs

Shahid Khan Ismail Khan

ORDER BELOW Exh.28
(Passed on 24.01.2024)

01] This is application for bail under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to accused on medical grounds 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 opposed the application by filing written say of I.O. at Exh.31.

03] Notice of this application was also issued to the informant/victim. However inspite of ample opportunity she did not file any say to this application.

04] Heard, Shri. A. N. Shaikh, Ld. advocate for the accused and Shri. S. K. Sonawane, Ld. APP for the State.

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 and four months the accused is in Jail and there is no progress in the case. Bail Application filed on behalf of applicant-accused is rejected by this Court vide order dated 04.12.2023, however in that order liberty is given to the accused to file bail application on medical grounds. At present the accused is admitted in Civil Hospital, Nashik and he is receiving medical treatment. His H.B. is reduced upto 4 and his health condition is serious and Medical Officer has advised him to admit accused in J. J. Hospital, Mumbai. The accused is also advised to undergo surgery. If proper medical treatment is not given to the accused his life will be in danger. 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, necessary report be called from the Medical Officer and regular bail be granted to the applicant-accused on medical grounds.

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

All earlier bail applications filed on behalf of the accused are rejected on merits. Offence is against minor-girl and provisions of POCSO Act are applicable. Accused was absconding for five months after the commission of crime. The bail application filed before the Hon'ble High Court of Judicature at Bombay is also rejected on merits. This

application is filed on medical grounds and no certificate is produce to show that medical facility required to accused is not available in the Government Hospital. Already medical treatment is provided to the accused and H. B. level is increased. The Medical Officer has submitted his report to that effect. Further, already charge is framed against accused and prosecution is ready to conduct the trial on day to day basis. The applicant-accused has played active role in committing offence against minor girl. If bail is granted even on medical grounds, there is every possibility of accused pressurizing the informant/victim and witnesses. Further the accused may commit more serious offence. Therefore, the bail application should be rejected.

07] Record shows that all earlier bail applications filed on behalf of the accused are rejected on merits by the concerned Addl. Sessions Judge, this Court and the Hon'ble High Court. All these applications were filed after the filing of charge-sheet and those were rejected on merits.

08] This application is filed on medical grounds. Therefore, the report from the Jail Authority and Medical Officer was called. Accordingly the medical report is submitted by the Chief Medical Officer, Nashik Road Central Prison. I have perused the said Medical Report (Exh.33). It seems that the accused was examined by the concerned Medical Officer on 20.01.2024 and the Medical Officer has noted the details of General Examination and Systemic Examination. As per the clause 10 of Medical Report, Clinical Diagnosis is “ Anaemia with Haemorrhoids ”. In clause 12 of the Medical Report the treatment given to accused is described. As per it at present H. B. level of accused is 8.3 % gm. In clause No.13 it is noted as Regular follow up in Medicine/Surgery OPD. In clause No.15 Present Health Status is noted as “ Haemodynamically unstable ”.

09] In the entire Medical Report the Chief Medical Officer, Nashik Road Central Prison has not noted that the medical treatment required to be given to the accused is not available in the Government Hospital or that the accused requires special medical treatment in private hospital. Record 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 because of the applications filed by the accused the delay is being caused in the commencement of trial. So far as health condition of accused is concerned, the concerned Jail Authority and Medical Officer can be directed to provide further required medical treatment and followup to the accused and to see that his health condition recovers early. In short, it can be said that considering the Medical Report there is no medical emergency so as to grant regular bail to the accused on medical grounds. However, regular medical check up and follow up is necessary to the accused. Therefore, the bail application is to be rejected by giving certain directions to the Jail Authority and the Medical Officer. Hence, I pass the following order.

ORDER

1. The application at Exh.28 is rejected.
2. The Jail Authority and the concerned Medical Officer to provide necessary medical check up or examination, medical treatment and regular medical follow up to the accused and to see that the health condition of accused recovers early.
3. Inform accordingly, to the D.G.P./P. P, the concerned Jail Authority, and Medical Officer, Central Prison, Nashik and the Police Station Officer of concerned Police Station.

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

Date- 24/01/2024.
Malegaon.

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

