

**Special (POCSO) Case No. 70 of 2022***The State Vs. Vicky @ Vikram Prakash @ Sitaram Ahire***Order Below Exh.8.**

( Passed on 24 July, 2023 )

1. Applicant / accused Vicky @ Vikram Prakash @ Sitaram Ahire, resident of Kokankhede, Tal. Chandwad, Dist. Nashik has filed this application for bail after filing of charge-sheet under Section 439 of the Criminal Procedure Code. He is arrested in Crime No. 300/2022 registered at Chandwad Police Station for the offences punishable under Sections 376(2)(i) and 506 of Indian Penal Code and under Sections 3, 4, 5(j)(2) and 5(1) of the Protection of Children from Sexual Offences Act.

2. Brief facts leading to the case of prosecution are as under :

Minor victim 'V' lodged complaint with Chandwad police station on 24/08/2022 stating therein that she is residing at village Kokankhede alongwith her family members. Her two sisters are married. Her mother has left the house when the informant was aged about 10 years. Her maternal aunt Mothyabai is residing at Nashik alongwith her husband and son Vicky Prakash Ahire. Vicky used to visit house of the informant frequently. Before 3 to 4 months of lodging the FIR, one day Vicky came to the house of informant at about 11.00 a.m. at that time, father of the victim had been out of the house for work and sister 'S' also had been to the house of Mothyabai. The informant was alone in the house. At that time, Vicky

came to her house and caught her. He threatened her to kill, in case she makes hue and cry. He caused her fell down and removed her clothes. He also removed his clothes and committed sexual intercourse with the informant. The accused threatened the informant to kill the informant and her sister, if she disclosed the said incident to anybody. He repeated the said incident for 2 to 3 times by threatening the informant / victim.

3. On 22/08/2022, the informant had been to her married sister at Adgaon-Tappa, Tal. Chandwad. At that time, she had pains in her stomach, therefore, her sister got suspicion and she checked her with the help of pregnancy kit and found that the informant was pregnant of 4 months. On the basis of said complaint above-said crime came to be registered against the accused.

4. Heard learned Advocate for applicant / accused. He vehemently submitted that there is inordinate delay in lodging the FIR. Sexual relations between victim and the accused were consensual. The victim was able to understand consequences of her acts. Investigation of the crime is completed and charge-sheet has been filed against accused in the Court. The accused is in custody since 24/08/2022. There is no need to keep the accused behind the bars. It will amount to pre-trial detention. The accused is ready to abide conditions of the bail. Therefore, he prayed to allow the application.

5. Heard learned A.P.P. Shri. R.L. Kapse for the State. He vehemently submitted that applicant has committed serious offence of rape. Prima facie case is made out against the accused. At the time of offence the age of the victim was about 13 years and 10 months. She was minor. Her consent is no consent in the eyes of law. The victim herself has lodged complaint against the accused. Charge-sheet has been filed against accused, DNA report is also on record. DNA report on record shows that victim and accused Vicky Ahire are concluded to be biological parents of femur bone of fetus of the victim. In medical report also, it is mentioned that hymen of the victim was torn. The victim has categorically stated in her statement before police and in the statement before Magistrate under Section 164 of Cr.P.C. that the accused has committed forcible intercourse with her. Therefore, it appears that strong prima facie case is made out against accused. There is every possibility that the accused may tamper with the prosecution evidence, if released on bail. Charge has been already framed against the accused. Prosecution is ready to expedite the trial. Therefore, considering seriousness and gravity of the crime, he prayed to reject the application.

6. Upon hearing the learned Advocate for applicant / accused and learned A.P.P. and on perusal of the documents on record, it appears that the alleged offence is of very serious nature. The prosecution has prima facie proved involvement of applicant in the alleged crime. At the time of commission of crime the victim was aged about 13 years and 10 months. Punishment of imprisonment for life is provided for the alleged offence punishable under Section

376 of I.P.C.

7. There is nothing on record to show that the accused is falsely implicated in this case. Admittedly, the accused has kept forcible physical relations with minor victim. DNA report is also on record. DNA report on record shows that victim and accused Vicky Ahire are concluded to be biological parents of femur bone of fetus of the victim. In medical report also, it is mentioned that hymen of the victim was torn. Therefore, it appears that strong prima facie case is made out against accused. There is no substance in the arguments of learned Advocate for the accused that the victim and the accused were in love relations. The victim has categorically stated in her statement before police and in the statement before Magistrate under Section 164 of Cr.P.C. that the accused has committed forcible intercourse with her.

8. Learned Advocate for the applicant / accused has relied on the following decisions.

- 1] Pratap Vs. State of UP and Others – Criminal Misc. Anticipatory Bail Application No. 4583 fo 2020 (Allahabad High Court)
- 2] Shiv ChandarVs. State of NCT of Delhi – Bail Application No. 352 of 2021 (Delhi High Court) ;
- 3] Praduman Vs. The State Govt. of NCT of Delhi – Bail Application No. 2380 of 2021 (Delhi High Court) ;
- 4] Imran Iqbal Shaikh Vs. State of Maharashtra – Bail Application No. 997 of 2022 (Bombay High Court) ;
- 5] Rahul Chandel Jatav Vs. State of M.P \_ Misc. Criminal Case No. 24691 of 2023 (Madhya Pradesh High Court).

9. I have gone through all these judgments. But facts of these cases and facts of the case in hand are totally different. I have already hold that there is nothing on record to show that there were romantic relations between victim and the accused. Victim has categorically stated that accused has forcible intercourse with her against her wish. She was minor at the time of incident, hence, her consent is no consent in the eyes of law. The victim has given satisfactory explanation about delay in lodging the FIR. According to her, due to threats given by the accused, she did not disclose the said incident to anybody and after knowing that she is pregnant, she lodged complaint against him. Considering the age and relations between the parties, it appears that explanation given by the victim is satisfactory. There is no reason to disbelieve her statement at this juncture. Her statement before police and statement before Magistrate under Section 164 of Cr.P.C. are consistent. It appears that offence committed by the accused is serious and anti-social in nature. There is every possibility that the accused may tamper with the prosecution evidence if released on bail. Considering all these facts and circumstances on record, I hold that the judgments on which learned Advocate for the accused has placed his reliance, are not useful for the accused and accused is not entitled to be released on bail.

10. A feeling would gain ground in the citizenry that persons in position, like applicant can commit the most outrageous acts and yet would be dealt softly by Courts. That indeed would be distressing. Larger the most interest of the society is also to be

considered while deciding such applications. I, therefore, find that application is devoid of merits. Considering the nature of the offence the applicant/ accused is not entitled to be enlarged on bail. In the result, I pass the following order.

**ORDER**

1] The application stands rejected.

*( Dictated and pronounced in open Court. )*

Date: 24/07/2023.

**( A. V. Gujarathi )**  
Additional Sessions Judge,  
Niphad.