

ORDER BELOW EXH.5

1] This is second bail application filed by the accused u/s. 439 of Code of Criminal Procedure in connection with CR No. 379/2021 registered with Warje Malwadi police station for the offences under Sections 376,376(2)(n) of the Indian Penal Code and under Sections 3,4,5(1),6 of the Protection of Children from Sexual Offences Act. [Hereinafter the Indian Penal Code referred to as “IPC” and the Protection of Children from Sexual Offences Act referred to as “POCSO Act” for the sake of brevity.]

2] The prosecution has filed say and opposed this bail application. The informant has filed say and resisted this application.

3] Heard Ld. Advocate for the accused and Spl.P.P. for the State. Perused application, say filed by the prosecution and the Charge-sheet.

4] It is argued by Ld. Advocate for the accused that it is the case of love affair. There is delay in lodging FIR. Medical report has not supported to the prosecution case and it discloses that hymen is intact. Further, even now investigation is completed. Advocate for the accused has placed on record Whatsapp chats of the accused and the victim and photographs of the informant. Hence, prayed for allowing the application.

5] Ld. Spl.P.P. has submitted that the victim is 16 years old and she has specifically stated the act of the accused as non consensual.

The report has been lodged immediately within 24 hours. Mere filing of the Charge-sheet is not ground for granting bail. Hence, she has prayed for rejection of the application.

6] It is the case of the prosecution that on 05.11.2021 at around 11.30 p.m. the accused forcibly took the victim at the back side of her house by holding her hand and he has repeatedly forcibly established non consensual sexual intercourse with the victim.

7] The informant is paternal aunt of the victim. On 05.11.2021 brother of the victim informed her that the victim was not in the house. Thereafter, they searched the victim. She did not find. She gave phone call to the victim but the victim did not pick her phone. Therefore, the informant gave phone call to father of the victim. Then the informant found the victim and she was frightened and was coming from back side of the house. She informed her that the accused took her forcibly at the back side of the house and he had given her threats to kill and forcibly established non consensual sexual intercourse with her.

8] Statement of the victim discloses that she has reiterated the incident. The victim is 15 years old. Her birth certificate is on record. History narrated by the victim to the doctor discloses that the victim and the accused are neighbours and they were talking with each other through Instagram since last 7 days before the incident. The accused called the victim to meet him near the house on relevant day, where the accused started kissing, hugging to the victim to whom the victim

was tried to resist. The accused had non consensual penetrative unprotected vaginal intercourse with the victim.

9] It prima facie discloses that the accused and the victim were chatting but chats produced on record nowhere prima facie leads me to accept that what had happened with the victim was due to love and affection and the victim surrendered herself to physical desires of the accused. Further, FSL report has not received. Prima facie there is opinion of the doctor that possibility of vaginal penetration cannot be ruled out. The victim is minor. Therefore, in the facts and circumstances, there is no change in circumstances.

10] Ld. Advocate for the accused has placed his reliance in *Sunil Mahadev Patil Vs. State of Maharashtra reported in 2016 All MR (Cri.) 1712*, in which it is observed that if statement of prosecutrix and witnesses shows that they were in love relationship with each other they eloped and went to temple and performed marriage, they started residing together in the house of relative, then there are mitigating circumstances. Moreover, it is observed that factor i.e. age of prosecutrix, whether act is violent, whether there are antecedents or not, whether offender is capable of repeating the act or not, whether there is likelihood of threats or intimidation if at all the boy is released, whether chance of tampering with material witnesses and age of the applicant and his employment and plan, stabilize and secure his future are to be taken into consideration while deciding bail application, when boy and minor girl are in love with each other.

11] Further, Ld. Advocate for the accused has placed his reliance in *Mahesh Bhimraj Jadhav Vs. The State of Maharashtra reported in 2015 ALL MR(Cri) 250*.

12] Further, Ld. Advocate for the accused has placed his reliance in *Satyam Ramchandra Fulore Vs. The State of Maharashtra (2015 ALL MR(Cri.) 2785)*, wherein, it is observed that victim was in love with the applicant and no history of any sexual or physical assault revealed from medical examination. The victim was 16 years old. At the time of alleged incident the victim had attained age of understanding. Therefore, it is held that the applicant cannot be said to have taken victim away from keeping of her lawful guardian. Prima-facie case made out for grant of bail and bail was granted.

13] Thus, in the background of above discussion, it cannot be said that it is a case of pure love affair of a boy and a girl. Conduct of the accused and resistance of the victim needs to taken into considering when FSL is awaiting. Hence, as there is no change in circumstances, application is to be rejected. With this, I proceed to pass the following order:

ORDER

- 1] The application is rejected.
- 2] Bail application stands disposed of accordingly.

Pune.
Date – 01/04/2022.

(S.P. Ponkshe)
Addl. Sessions Judge, Pune.

“ I affirm that the contents of the P.D.F. File Judgment are same word for word as per original judgment.

Name of Steno	- Sau.S.V.Thakar (Steno G-1)
Court Name	- Smt. S. P. Ponkshe, Addl.Sessions Judge,Pune.
Date of Order	- 01.04.2022
Order dictated on	- 01.04.2022
Order transcribed on	- 01.04.2022
Order signed by P.O.	- 05.04.2022
Uploaded on	- 05.04.2022