

**ORDER BELOW EXH.17**

The accused Kishor Parmeshwar Kedar aged 23 years was arrested on 28.11.2023 in connection with C.R. No. 185/2023 registered in Alankar Police Station under Section 376, 376(2)(n), 376(3), 354-D, 506 r/w 34 of the Indian Penal Code, under Section 4,6,12 of the Protection of Children from Sexual Offences Act, 2012 and under Section 6, 3(1)(w)(i)(ii), 3(2)(v)(va), 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He has filed this application for bail under Section 439 of the Cr.P.C. He contends that this is his first bail application and no other bail application is pending in any other Court.

2. The indictment of the accused as it reveals from the allegations in the FIR and other investigating papers is that the victim girl aged 15 years was studying in 10<sup>th</sup> standard and was residing with her grandmother (mother's mother). Her father has died and mother has left home and she resides under the mercy of her maternal uncle's and the grandmother. She used to go to tuition class from 7.00 p.m. to 8.00 p.m. The accused are the real brothers who were residing near the class. The accused No.2 Nakul was stalking at her which was causing disturbance to her. For getting rid of it, she went to his house on 12.10.2023 and made complaint to his elder brother, the present accused. He snatched her in the room and committed rape on her forcibly asking why she was making complaint and she has not status to make such complaint as she belongs to the Scheduled Caste. On 18.11.2023, the present accused again committed rape on her by snatching her in his room. The victim

narrated those incidents to her maternal uncle and that is how the complaint was lodged, the crime was registered and both the accused were arrested on 28.11.2023. The accused No.2 Nakul Kedar has been released on bail as there was only allegation of stalking against him.

3. The present accused contends that he has committed no offence and he is falsely implicated. His Ld. Advocate submits that the investigation of this crime has been completed and the charge-sheet is filed. The complaint was lodged belatedly only to harass this accused and his family members. The medical evidence does not support the allegations of the victim. The accused has no criminal antecedents and he will abide by all the conditions those would be imposed by the Court.

4. The Ld. Advocate has relied upon the judgment in *Javed Pathan Vs. State of Maharashtra (Criminal Bail Application No. 995 of 2021 decided on 11.03.2022)*, wherein the medical report was not showing any injury on the private parts of the victim and the medical report was silent about any finding of the victim being subjected to sexual intercourse. Charge-sheet was filed and therefore, the accused was released on bail. In *Ajgar Dastgir Vs. State of Karnataka (Criminal Petition No. 3274 of 2020 decided on 22.09.2020)*, wherein there were no external injuries seen over the body of victim and the allegation of sexual assaults was not corroborated with medical evidence. The investigation was completed. Under the circumstance, the accused was released on bail.

5. The Investigating Officer has filed say opposing this bail application and based on it the Ld. A.P.P. submits that the offence is serious committed on a minor girl of the age of 15 years. Mere filing charge-sheet cannot be the ground to release the accused on bail. The trial can be proceeded expeditiously. Hence, he submits that this application be rejected.

6. Having considered the rival submissions, this bail application does not contain any ground which would suggest prima facie that the accused might have been falsely implicated. The victim and the accused are residing at different locality. The accused were residing near the class of the victim. There is no contention that there was any previous dispute between the accused and the victim or her family members. Thus, the theory of false implication is not prima facie probablised. The medical opinion does not reach to any definite conclusion as it is stated that possibility of attempt of vaginal penetration cannot be ruled out and at the same time, it is opined that there is no evidence of vaginal penetration and no evidence of any fresh surface physical injury at present. It is also opined that possibility of anal penetration and attempt of anal penetration cannot be ruled out. Thus, the medical evidence at this stage is not conclusive about the fact that there was no sexual intercourse as alleged by the victim.

7. According to me, the investigating papers prima facie disclosed that a helpless minor girl pursuing her studies has been ravished by the present accused particularly when she had been to his

house to make complaint against his brother.

**8.** Considering the seriousness of the offence and the material collected during investigation, there is no ground put forth which would justify release of the accused on bail. I find that this application is devoid of merit and is liable to be rejected. Hence, the order -

**ORDER**

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

Pune.  
Date – 28.06.2024.

(S.R. Salunkhe)  
Spl. Judge (POCSO), 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	-	S. R. Salunkhe, Spl.Judge (POCSO) Pune.
Date of Order	-	28.06.2024
Order dictated on	-	28.06.2024
Order transcribed on	-	28.06.2024
Order signed by P.O.	-	28.06.2024
Uploaded on	-	29.06.2024