

ORDER BELOW APPLICATION DT. 09.7.2020

(State of Maharashtra V/s. Sandip Sambhaji Borade)

1- Perused application and say filed by APP and I.O. Heard Advocate for accused and APP for State.

2- This is bail application filed under section 439 of Cr.P.C. by accused in respect of his arrest in C.R. No.211/2019 registered at Hadapsar Police Station for the offence punishable under sections 363, 376(1) of Indian Penal Code and under section 4 of Protection of Children from Sexual Offences Act. It is alleged that the father of victim aged about 17 years 3 months lodged report stating that victim and her brother did not return to house on 03.3.2019 and wife of his relative told wife of first informant that she saw victim and her brother going from white car of present accused. Present accused is relative of first informant. During investigation and after recording statement of victim it revealed that accused i.e. their relative made them to sit in his white coloured car, took them at Ravet, then at Rajhans Lodge in one room. When her brother slept, accused forcibly committed sexual intercourse with her and threatened her not to disclose the incident to anyone.

3- According to accused, he is falsely implicated in this matter. He is in custody since 07.3.2019. Charge-sheet is filed on 04.5.2019 and no single witness is examined. Further, due to spread of COVID-19 it is not possible to start trial in near future. Conduct of victim is doubtful as she travelled with accused, she and her brother stayed in one room in Lodge at night with accused, in spite of it for about 2 days she did not raise alarm. Victim is more than 17 years, so she knows the consequence of acts. She did not disclose the incident and did not raise alarm. Accused is doing work as driver and his family members are depending on him. He has no criminal

antecedents. Accused is originally resident of Beed district having immovable property there. His parents are depending on him and they submitted affidavits that they will not allow accused to enter into Pune district. He is ready to abide the conditions, so he prayed to release him on bail.

4- APP objected this application on the ground that charge-sheet is filed. Victim and accused are relatives and also residing in same locality. Delay in trial is no ground at present to release accused on bail. Considering this, accused will pressurize victim and witnesses. There is possibility of tampering prosecution evidence, so she prayed to reject the application.

5- Allegations against accused are serious. From statement of victim and her brother role attributed to accused can be gathered. Their statements are also recorded u/s. 164 of Cr.P.C. and it revealed that accused i.e. paternal uncle made victim and her brother to sit in their white coloured Swift Dzire, took them at Rajhans Lodge, Bhugaon. Victim stated that at night accused committed forcible sexual intercourse with her and threatened her not to disclose incident. Her medical report shows similar history and there is evidence of vaginal penetration. In view of relationship and as accused is aged about 37 years, there cannot be the case of love affair between them. Therefore, there is no substance in the submission of Advocate of accused that victim has attained age of sufficient maturity. Advocate of accused relied on authority cited in **Unreported Bail Application 817/2020 between Suraj S. Paithankar V/s. The State of Maharashtra, decided on 03.7.2020**, in which it is observed that if charge-sheet is filed and presence of accused can be secured, then by taking undertaking that accused will not enter in jurisdiction of Pune city, bail was granted to accused.

6- Ratio laid down in above cited ruling is noted. In this matter, charge-sheet is filed, but considering relationship and age difference, there is every possibility of giving threat and pressure by accused to victim and possibility of tampering prosecution evidence. Accused is in dominating position over victim and act was committed after giving threats to her. Advocate of accused emphasized on affidavit of parents of accused that they will not allow accused in entering Pune city. In view of gravity of the offence, though charge-sheet is filed, it is not proper to release accused on bail at this initial stage. Therefore, application deserves to be rejected with following order.

ORDER

The application is rejected.

Pune.
Date – 24.7.2020.

(R.V.Adone)
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	- Arya Nikam (Stenographer G-1)
Court Name	- 24.7.2020.
Order signed by P.O.	- 24.7.2020.
Order uploaded on	- 27.7.2020.