

ORDER BELOW EXH.03
(Passed on 16/01/2021)

This is an application under Section 439 of the Code of Criminal Procedure by the Applicant/Accused Aniket Vikas Uttekar, seeking his release on bail in present case (Crime No.426/2020 Loni Kalbhor Police Station, Pune) for the offences under Section 376(j)(n) of the Indian Penal Code, Sections 3(1)(w)(i)(ii), 3(2)(va), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sections 3, 4, 5(l), 6 of the Protection of Children from Sexual Offences Act, 2012. This is 2nd bail application by the Applicant/Accused. His 1st bail application bearing Cri.Bail Application No.2354/2020 was not pressed by the Advocate on 21/09/2020 and was accordingly disposed of.

2. The prosecution story is that, the Applicant who is about 19 years old, had love affair with the victim. He induced the victim-girl on the pretext of his love towards her and will marry her, had sexual relations with her for 04-05 times. However, he further threatened her for her life if she told about this incident to her parents. Hence, the victim had submitted to his request. She got pregnant. When the victim's mother asked the Applicant/Accused about the marriage, he denied giving the reason for difference in caste and hence, the offence was registered against him on the complaint lodged by the victim.

3. It is contended by the Applicant/Accused that, he has not committed any offence as alleged against him and he has no role to play in the said offence. As the investigation is completed and charge-sheet is filed in the Court on 19/08/2020, his custodial interrogation is not required and hence, not required to remain in jail further. It is further stated that, victim-girl is sister of his friend and thus she knew the Applicant/Accused very well. They had love affair since 2017. As the age of the victim-girl is about 16 years, she is of due understandable age and hence, she was knowing what she is doing. It is further stated that, in this pandemic situation of COVID-19 infection to the Applicant/Accused cannot be ruled out and hence, he request for release on bail.

4. The prosecution has filed its say at Exh.10, reiterating the story in F.I.R. stating that, if the Applicant/Accused is released on bail, he may tamper the evidence and also threatened the witnesses to resile them from their statements. It is further stated that, there is possibility of absconding, if he is released on bail and hence, his application be rejected.

5. The Complainant has filed her hand-written say stating that, if the Applicant/Accused is released on bail, there is threat to life of herself and her child.

6. Heard the Advocate for the Applicant/Accused, A.P.P. and the Complainant's mother Smt. Anita Lokhande. Perused the charge-sheet. The complaint is filed by victim-girl who is 17 years old. Her mother Anita Lokhande sworn an affidavit at Exh.13 stating that, the Complainant-victim is her daughter, but she do not have any identity card such as Aadhaar Card, Pan Card or Voters ID Card, which can show her age.

7. It is to be hereby seen that, the Applicant/Accused who at the time of offence was 19 years old, is himself not of marriageable age of 21 years. The Advocate for the Applicant/Accused contended that, the F.I.R. was lodged only on the ground that, marriage was not solemnized between the victim and Applicant/Accused. He stated that, the Applicant/Accused is ready to sworn an affidavit of his own father stating that, he is ready to perform the marriage of Applicant/Accused and the victim-girl as soon as they both attain the marriageable age.

8. The story of Applicant/Accused is of love affair between him and the victim-girl and thus the sexual relation occurred between them, were consensual. It is to be hereby stated that, as the victim is minor, her consent in such cases is immaterial. On perusal of medical paper placed on record along-with charge-sheet, the history given to the doctor was about non-consensual sexual intercourse and threatenings for having the same.

9. The Advocate for the Applicant/Accused relies upon (a) *Hrishab Sharma -vs- State of Himachal Pradesh, 2019 LawSuit(HP) 500*, (b) *Roshanbhai Hasanbhai Rangsaj -vs- State of Gujarat, 2019 LawSuit (Guj) 181* and (c) *Harsul S/O Gambhirdan Banesingh Gadhavi -vs- State of Gujarat, 2019 LawSuit(Guj) 24*.

10. Relying upon the case of *Hrishab Sharma* (supra), the Advocate submitted that, the object of bail is not for the punishment. The Hon'ble Court quoting the case of *Sanjay Chandra -vs- Central Bureau of Investigation, 2012 1 SCC 49*, held that,

The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon.

11. The Hon'ble Gujarat High Court in case of *Roshanbhai Hasanbhai Rangsaj* (supra) held that,

It also appears from the statement of the prosecutrix that there is love affairs between the main accused and the victim.

12. In the case of *Harsul S/O Gambhirdan Banesingh Gadhavi* (supra) held that,

Considering the history narrated before the Medical Officer, the element of love affair cannot be ruled out.

13. In the case in hand while perusing the medical papers, the history given to the doctor by the victim in presence of her mother, was that though they were in love relationship, but sexual intercourse was non-consensual. The victim was threatened by the Applicant/Accused. Similarly, statement is given by the Complainant on 19/06/2020 to the police. At present the Complainant-victim has a child born from this relationship.

14. The contention of the Applicant/Accused that, he is ready to marry victim-girl as soon as they both attain marriageable age, do not sustain. As I lay my hand on the *State Madhya Pradesh -vs- Laxmi Narayan and others, 2009(5) SCC 688*, wherein the Hon'ble Court held that, heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be appropriately quashed. This ratio can be applied in the present matter as the Applicant/Accused contended that, he is ready to marry the victim-girl and accept the child to settle the matter. Thus, it is seen that, to get the bail, the Applicant/Accused is making statement of accepting

the child and marrying the victim-girl, though he himself is not of marriageable age, do not make him entitled for release on bail and hence, I proceed to pass the following order.

ORDER

The application Exh.03 stands rejected.

Date : 16/01/2021	(Mrs. Sharayoo V. Sahare) Special Judge and Addl. Sessions Judge, Pune.
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“I affirm that the contents of this P.D.F file Order are same word for word as per original Order.

Name of the Steno : Smt. K.S.Tambe (Grade I)

Court Name : Special Judge & Addl. Sessions Judge, Pune.

Date : 16/01/2021

Order signed by presiding officer on : 18/01/2021

Order uploaded on : 18/01/2021.”