

**ORDER BELOW EXH.2**

1] Perused application and say. Heard Advocate for accused and APP for the State.

2] This is first bail application filed under section 439 of Cr.P.C. by accused in respect of his arrest in C.R. No. 294/2019 registered at Chaturshrungi Police Station for the offence punishable under sections 354, 354-A, 363, 376 r/w. S. 34 of the Indian Penal Code and under section 3, 4, 5, 6, 8, 12, 16 & 17 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that victim aged about 17 years lodged report stating that on 19.3.2019 after ITI classes she made phone call to her friend and while going to her house by PMT bus, from mobile number of her friend Bharat, she received call of her mother. She felt that her mother would scold her, therefore she went to accused Asif Mulla at SR Lodge Alandi, Pune and asked him to make a temporary arrangement of her residence. Accused Asif Mulla introduced victim with his friends i.e. other accused and as per instance of Asif, other accused Sudarshan took victim at the house of his friend Vishal, where they resided together for three days. Accused Vishal made obscene acts with victim. Then, accused Sudarshan introduced victim with other accused i.e. present accused Anil and they made arrangement of residence of victim in the flat of present accused Anil. In that flat, accused Sudarshan forcibly committed sexual intercourse with victim. Accused Anil also committed sexual intercourse with victim for 2-3 times.

3] According to accused he is falsely implicated in this matter. Investigation is over and charge-sheet is filed His personal custody is not required. Co-accused Asif and Vishal are released on bail, so there is ground of parity. He has no criminal antecedents. He is ready to abide the conditions. Hence, he prayed to release him on bail.

4] APP and I.O. objected this application on the ground that though charge-sheet is filed, there is gravity of the offence. Present accused is married person, he did not hand over the custody of victim to her guardian, but he repeatedly committed sexual intercourse with her. There is possibility of giving threat and pressure by accused to victim and witnesses, and possibility of tampering prosecution evidence. So, they prayed to reject the application.

5] Allegations against accused are serious. From statement of victim, role attributed to accused can be gathered. Other accused made arrangement of residence of victim in flat of present accused, where accused Sudarshan and present accused committed forcible sexual intercourse with victim, act was repeated by this accused. There is one more statement of victim showing allegations that when wife of present accused was not in the flat, he committed repeated sexual intercourse with victim. Advocate of accused submitted that victim is above 17 years old and she knows the consequences of act as she has attained age of sufficient maturity. In this context, Advocate for Accused relied on authorities cited in **(i) 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 accused 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.

(ii) **Satyam Ramchandra Fulore Vs. State of Maharashtra reported in 2015 All M.R. (Cri.) 2785**, in which it is observed that if victim was in love with applicant and no history of sexual or physical assault revealed from the medical examination, victim being 16 years old had attained age of understanding, prima-facie case is made out for grant of bail.

(iii) **Mahesh Bhimraj Jadhav Vs. State of Maharashtra reported in 2015 ALL MR (Cri) 250**, in which it is observed that in complaint of rape on minor who got pregnant and made complaint only after pregnancy of four months was detected and if victim is 17 years old, bail was granted by imposing certain conditions.

(iv) **Shiney Suraj Ahuja V/s. State of Maharashtra, 2010 ALL MR (Cri) 92**, in which it is observed that while considering the bail application, the Court is not supposed to deal with the submissions in minute details and pronounce correctness or otherwise of the same. However, Court is expected to broadly consider evidence, material and circumstances on record and then form an opinion as to whether the applicant is entitled to be released on bail or otherwise.

(v) **Kailas Navnath Gade V/s. State of Maharashtra, 2008 ALL MR (Cri) 2130**, in which it is observed that victim aged about 16 years left house at her own accord, accompanied applicant at various places and stayed with him for about 2 to half month, then it was sexual intercourse by consent and bail was granted.

(vi) **Sayed Malloomiyah Sayed V/s. State of Maharashtra, 2004 ALL MR (Cri) 1**, in which it is observed that the statement of victim before police reflects that she was consenting party, therefore in a case of molestation of minor victim aged about 16 years, bail was granted to accused.

(vii) **Raj Kumar V/s. State of Himachal Pradesh, 2017 ALL MR (Cri) Journal 327**, in which it is observed that court has to look into circumstances and facts of each case in order to decide whether bail is to be granted or not.

6] Ratios laid down in above cited rulings are noted. In both statements of victim, there is no case of love affair between victim and present accused. Moreover, present accused is married person as per prosecution case and aged about 27 years. Therefore, there is gravity of offence. Act was repeated by him for about 3 to 4 months. Role attributed to co-accused Vishal and Asif was different, therefore there is no ground of parity. Though charge-sheet is filed, in view of gravity of offence, there is no change in circumstances. At this initial stage, there is possibility of tampering prosecution evidence by giving threat and pressure to victim and witnesses. No material grounds are brought on record for releasing accused on bail. Hence, in view of all above reasons, nature and gravity of offence, it is not proper to release accused on bail and following order is passed:

**ORDER**

Application is rejected.

Pune.  
Date -31.8.2019.

Sd/-  
(R.V.Adone)  
Addl. Sessions Judge, Pune.

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

Name of Steno	- Prafulla Mane (Stenographer G-3)
Court Name	- Smt. R.V.Adone, Addl.Sessions Judge,Pune.
Date of Order	- 31.8.2019.
Order signed by P.O.	- 31.8.2019.
Order uploaded on	- 03.9.2019.