

ORDER BELOW EXH. 03

1] This is an application for seeking bail u/s. 439 of Code of Criminal Procedure

2] The prosecution has filed say and opposed the bail on the ground that the offence is very serious in nature. The victim is 12 years old and mentally disabled. In the first information report the name of the accused is reflected. Eye witnesses are there in respect of commission of offence by the accused. Further the accused has taken undue advantage of minor victim, who is mentally disabled. If the accused is released on bail, there is possibility of his absconding and pressurizing the witnesses. Hence, prayed for rejection of application.

3] Heard Ld. Advocate for the applicant and Ld. APP for the State at length. Perused the application, say filed and charge-sheet.

4] It is argued by the Ld. Advocate for the applicant that, this is second bail application. Now charge-sheet has been filed. There is unexplained delay in filing FIR. The accused himself had gone to lodge the report. The offence is not punishable with death or life imprisonment. There are no criminal antecedents against him. There are no prima facie material in respect of any threats given by the accused. There is no reason to keep the accused behind bars for unknown period, as there is no possibility to conclude the trial in short time. The accused is ready to leave the said village. Hence, prayed for allowing the application.

5] Ld. APP has submitted that, the statement of the victim is very

material. There are specific allegations against the present accused. The nature of the offence is serious. There is no evidence to show that, on the same day of the incident, the accused went to lodge the report. The accused is in dominating position. Hence, prayed for rejection of the application.

6] It is the case of the prosecution that, on 20/05/2021 at about 5.00 p.m. witness Balasaheb Dhaygude came when the informant and Tulsa Ankush Jadhav were present and he told them about the incident. The witness had seen the accused while pressing the chest of the victim at the new construction site of the witness. The victim is 12 years and 3 months old and mentally disabled. The accused told the victim that, he will give money to her and took her at the said new construction site and pressed her chest.

7] After perusal of papers it discloses that, mother of the victim has lodged report on 23/05/2021, after getting knowledge of the incident from one witness Balasaheb Dhaygude and the victim. The statement of the victim discloses that, the accused came to her and took her at new construction site in a room by holding her hands and he told her that he will give her money. The accused pressed her chest and at that time witness came there.

8] It appears that, the investigation has been completed and charge-sheet is filed in the court. After perusal of charge-sheet prima facie nothing has filed on record to show that the victim is mentally disabled girl. There is no medical reports tendered to show mental illness of the victim. The investigation has been completed and charge-sheet has been

filed. Considering present situation, there is no possibility to conclude the trial in short time. In the circumstances there is no reason to keep the accused behind bars for unknown period. It reveals that, the accused has shown even willingness to leave the said village.

9] Ld. Advocate for the accused has placed his reliance in **Ramkrishna Raghunath Burkule Vs. State of Maharashtra reported in [1997]3 Crimes (HC) 365**. In this case there are no prima facie material regarding oral allegations of tampering. The person accused of an offence is not be denied bail only by way of punishment.

10] In the circumstances considering the nature of the offence and as the investigation is completed and prima facie no material regarding allegations of tampering, it is just to release the accused on bail, by imposing stringent conditions upon him. Therefore, application is to be allowed. With this, I proceed to pass following order.

ORDER

- 1] The application is allowed.
- 2] The accused Aasif Hasan Pathan be enlarged on bail on executing P.R. bond of Rs.30,000/- with one or two sureties in the like amount.
- 3] The accused shall not tamper with the prosecution evidence in any manner. He shall not pressurize, threaten the victim, informant and family members and witnesses and shall not indulge in any offence.
- 4] The accused shall make himself available and shall regularly attend each and every Court date.

- 5] The accused shall not visit the locality where the victim is residing and he shall not confront himself before the victim directly or indirectly.
- 6] The accused shall submit his address proof and phone details as well as phone details of his two close relatives to Investigating Officer.
- 7] The accused shall not leave State of Maharashtra without prior permission of this Court.
- 8] Violation of any of the conditions imposed shall amount the cancellation of bail forthwith.
- 9] Bail application stands disposed of accordingly.

Pune.
Date – 29/07/2021

Sd/-xxx
(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	-	S.P. Bhagwat, Steno-II
Court Name	-	Smt. S. P. Ponkshe, Addl.Sessions Judge,Pune.
Date of Order	-	29/07/2021.
Order dictated on	-	29/07/2021
Order transcribed on	-	30/07/2021
Order checked and signed by P.O.	-	06/08/2021
Uploaded on	-	06/08/2021