

ORDER BELOW EXH.12

1] This is an application for bail filed by the accused u/s. 439 of Code of Criminal Procedure in connection with CR No. 135/2021 registered with Kondhawa police station for the offences under Sections 14(1) of the Protection of Children from Sexual Offences Act and under Section 67(B) of the Information Technology Act. [Hereinafter the Protection of Children from Sexual Offences Act referred to as “POCSO Act” and under Section Information Technology Act referred to as “the I.T.Act” for the sake of brevity.]

2] The prosecution has filed say and opposed this bail application.

3] Heard Ld. Advocate for the accused and Spl.P.P. for the State. Perused application, say filed by the prosecution and the Charge-sheet.

4] It is argued by Ld. Advocate for the accused that this is second bail application. The change in circumstances are there and he has pointed out that there is no compliance of Arnesh Kumar Case. There is delay in lodging complaint. Notice under Section 41-A of Cr.P.C. was not served to the applicant before his arrest. Maximum punishment provided for the offence is 5 years. Hence, prayed for allowing the application.

5] Ld. Advocate for the applicant has placed his reliance in -

i] Laxman Irappa Hattiand another Vs. State of Maharashtra in Criminal Application no. 2816/2004 decided on 15.07.2004.

ii] Rakesh Kumar Vs. Vijayanta Arya (DCP) and others in Cont. CAS(C) 480/2020 decided on 07.12.2021.

iii] Jagdish Shrivastav Vs. State of Maharashtra in Special Leave toAppeal (Cri.) no. 1758/2022 decided on 11.03.2022.

iv] Arnesh Kumar Vs. State of Bihar in Criminal Appeal no. 1277/2014 decided on 02.07.2014,

v] Mohsin Salimbhai Qureshi Vs. State of Gujarat in Criminal Misc. Appln. no. 91/2022 decided on 07.03.2022.

6] Ld. Spl.P.P. has submitted that there are no change in circumstances and authorities cited are not applicable. Hence, prayed for rejection of the application.

7] I would like to mention here that first time it is pointed out that notice under Section 41-A of Cr.P.C. was not issued and there is breach of compliance on the part of investigating agency. The prosecution has not pointed out regarding compliance of Section 41-A of Cr.P.C. Thus, it appears that as per the directions in Arnesh Kumar Case, mandatory compliance of issuance of notice to the applicant before his arrest has not been made. In such peculiar facts i.e. want of notice to the applicant before his arrest under Section 41-A of Cr.P.C. and in view of nature of the offence, it is just and proper to release the applicant on bail by imposing stringent conditions upon him. With this, I proceed to pass the following order:

ORDER

1] The application is allowed.

- 2] The accused **Shailesh Rampyare Sharma** shall be released on bail upon furnishing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- 3] The accused shall attend concerned police station on every 15th date of the month between 10.00 am to 11.00 am till conclusion of the trial.
- 4] The accused shall not tamper with the prosecution evidence in any manner.
- 5] The accused shall not contact with the victim and family members, in any manner.
- 6] The accused shall submit his address proof and phone details as well as phone details of two close relatives to Investigating Officer.
- 7] The accused shall not leave The State of Maharashtra without prior permission of the Investigating Officer.
- 8] Violation of any of the conditions imposed, shall amount the cancellation of bail forthwith.
- 9] Bail application stands disposed of accordingly.

Pune.
Date – 06/06/2022.

(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	- Sau.S.V.Thakar (Steno G-1)
Court Name	- Smt. S. P. Ponkshe, Addl.Sessions Judge,Pune.
Date of Order	- 06.06.2022
Order dictated on	- 06.06.2022
Order transcribed on	- 06.06.2022
Order signed by P.O.	- 07.06.2022
Uploaded on	- 07.06.2022