

State of Maharashtra

Vs.

Onkar Rajendra Lashkare

: Order below Exh. 05 :(Dated 30th March 2022)

This is the successive application for bail filed after filing of the charge-sheet by accused U/s.439 of the Cr.P.C. for grant of regular bail, in connection with Crime No.997/2021, registered with Yavat Police Station, for the offences punishable U/Ss. 363, 376, 323, 506 of the IPC and U/Ss. 4, 6, 8 R/w.12 of The Protection of Children from Sexual Offences Act, 2012.

02 Heard Ld. Advocate for the accused, Ld. A.P.P. for the State. Read the application and say (Exh.09). Perused the documents filed along with charge-sheet.

03 FIR discloses that, on 15.11.2021 at about 10.00 p.m., victim aged 12 years 6 months, had gone to attend nature's call. Some time has been lapsed, but she could not return to home, therefore, informant took search of his daughter, but in vain. Therefore, Informant realized that, somebody has kidnapped his daughter. So he has lodged complaint dated 16.11.2021. On 20.11.2021, police found victim with the accused at Alandi and brought at Yavat Police Station. On inquiry with the victim, she stated that, accused kidnapped her and forcibly committed rape on her. CR No.997/2021 came to be registered against the applicant/accused for the offences punishable U/Ss. 363, 376, 323, 506 of the IPC and U/Ss. 4, 6, 8 R/w.12 of The Protection of Children from Sexual Offences Act, 2012. Applicant was arrested on 20.11.2021, and since then, he is in jail. Investigation is completed followed by filing of charge-sheet.

04 Ld. Advocate for the applicant/accused submitted that, investigation is completed followed by filing of charge-sheet, therefore, further custody of the accused is un-warranted. That, there is no any evidence to substantiate the fact that, victim was raped by the accused. That, medical evidence on record though show that, there is rupture of hymen but it is old and old hilled hymen and there was no any fresh bleeding injury which itself speak that, there was no any sexual penetration. That, prosecution has produced xerox copy of birth certificate if victim but it being a xerox copy is not admissible in evidence and cannot be relied upon. That, applicant accused is aged about 20 years, having no any criminal antecedents. That, trial will take its own time to decide the matter on merit and for indefinite period, it is not just to keep the applicant accused behind the bars. That the applicant is ready to abide by any conditions imposed by this Court if released on bail. With these amongst other grounds, applicant prayed to release the applicant accused on bail.

05 On the contrary, Ld. A.P.P. submitted that, offences alleged against the applicant/accused are very serious in nature. Age of victim is 12 years and 6 months. That accused has kidnapped and raped the victim for several times. The applicant knew that victim is minor, in spite of that, he has committed such heinous act. That, both applicant and victim are residing near to each other, therefore he will pressurize the victim and other witnesses. By making such averments, Ld. A.P.P. prayed to reject the application.

06 Informant is present in the Court, who has submitted affidavit whereby opposed the application.

07 I have gone through the submissions of both the parties and documents filed on record. The birth certificate of victim though not original one, prima facie shows that, victim is aged about 12 years and 6 months. More so, history narrated by victim at the time of her medical examination as well as statement recorded by Police and Ld. Magistrate U/s.164 be speak that, the accused forcibly brought her at Ranjangaon and Chakan, where he committed rape upon her. It is submitted on behalf of the applicant accused that, victim was in love with applicant and they have voluntarily resided at said places but there was no any physical relationship occurred between them and to substantiate the said fact, they have produced photographs. But statement of victim as stated supra and fact that victim is aged about 12 years and 6 months the act of accused who is 20 years old even if it presumed to be with consent, cannot exonerated him from the penal provisions of the Act. More so, recently the Hon'ble Supreme Court in case of **X (Minor) Vs. State of Jharkhand and another, 2022 Live Law (SC) 194** held that, love affair between minor victim and accused have no bearing on grant of bail. Thus, in backdrop of the above facts and circumstances, there is strong prima facie case made out against the accused U/ss. 4 and 6 of the POCSO Act and U/s. 376 of the IPC which is punishable up to life imprisonment or death. Therefore, the applicant accused is not entitled for bail. Hence, the order:-

ORDER

Application (Exh. 05) is rejected.

Date : 30.03.2022

(J. A. Shaikh)
Additional Sessions Judge,
Baramati.

I affirm that the contents of this P.D.F. file order are same word for word as per original order.

Name of Steno.	:-	S.P. Chabukswar
Court Name	:-	J.A. Shaikh Additional Sessions Judge, Baramati
Date	:-	30.03.2022
order signed by P.O. on :-		30.03.2022
order uploaded on	:-	31.03.2022