

IN THE COURT OF SPECIAL JUDGE, (POCSO), AT – BARAMATI

SPL. CASE NO. 49 OF 2020

Subhash Bhimrao Pawar. APPLICANT/ACCUSED
V/S.

State of Maharashtra OPPONENT/COMPLAINANT

ORDER BELOW BAIL APPLICATION (EXH. 4)

- 1) The applicant/accused No. 1 (hereinafter in short referred to as ‘the accused’) has filed this 2nd application for grant of bail, under Sec. 439 of the Cr.P.C., in the Crime No. 122 of 2019, for the offences under Secs. 363, 366, 368 r/w. 34 of the Indian Penal Code (in short ‘the I.P.C.’) and under Secs. 4, 5 (l), 5(n) of the Protection of Children From Sexual Offences Act, 2012 (in short ‘the POCSO Act’), registered with Daund Police Station, Dist.- Pune.
- 2) It is submitted that the accused has been falsely implicated in the abovesaid crime. The accused is the permanent resident of village – Majara, Tal.- Chalisgaon, Dist.- Jalgaon, having landed property therein. He is the only earning member of his family. The accused No. 4 viz. Indal Bhimrao Pawar, who was arrested in the abovesaid crime by the police, has been released on bail. The accused is ready to obey the conditions to be imposed on him while granting bail. The accused lastly prayed to grant bail application.

- 3) Learned APP for the Prosecution Mr. S.B. Ohol submitted say at Exh. 7 resisting the application for granting bail Exh. 4. It is submitted that there is prima facie strong evidence against the accused. The offences levelled against the accused under the I.P.C. and the POCSO Act are the serious offences and maximum punishment of imprisonment for life or death is provided. The accused No. 2 viz. Sou. Rupali Subhash Pawar, who is the wife of the accused Subhash, is absconding. If the accused is released on bail, then he will also be absconded and will pressurize or threaten to the victim child and the prosecution witnesses. The prosecution lastly prayed to reject the bail application.
- 4) The original complainant, who is the father of the victim child appeared and filed his affidavit at Exh. 11, resisting the application for bail Exh. 4. It is submitted that the accused, is the sugarcane cutting labourer and use to possess sharp weapon (Koyta). If the accused is released on bail, then he will pressurize or threaten to the prosecution witnesses and is likely to abscond. He lastly prayed to reject the bail application.
- 5) I have heard to learned advocate Shri. R.D. Kshirsagar, for the accused, learned APP Shri. S.B. Ohol for the Prosecution and learned Advocate Shri. A.W. Gaikwad for the original complainant, who have advanced their arguments in the line of application, say and affidavit, respectively.
- 6) I have gone through the chargesheet and documents on record. It appears that the accused being relative of the victim girl child,

aged 14 years, kidnapped her and committed aggravated penetrative sexual assault repeatedly on her, so she became pregnant. The offences levelled against the accused under the I.P.C. and the POCSO Act are of serious nature. Cri. M.A. No. 523 of 2020 previously filed by the accused for grant of bail has already been rejected on merit. There is ample evidence on record to show the figure towards the accused about committing aggravated penetrative sexual assault on minor victim child, who is under the age of 16 years, which is punishable with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death. Considering the gravity of the offences alleged to have been committed by the accused, it is not proper to grant him bail by showing leniency.

- 7) The accused is the sugar cane cutting labourer and use to wander from one place to another for cutting sugar cane. If the accused released on bail then possibility of his absconding, with intent to avoid to face the trial, cannot be ruled out, as his wife - Rupali and brother – Sandip, who are the accused in this crime, are absconded and chargesheet is filed against them under Sec. 299 of the Cr.P.C. Further if the accused is released on bail, then he will pressurise or threaten to the victim child, complainant and prosecution witnesses. There are no change of circumstances, so as to grant bail to the accused. Under such circumstances, it is not just, proper and reasonable to release the accused on bail under Sec. 439 of the Cr.P.C.

- 8) I have gone through zerox copies of various orders of granting bail by the Hon'ble Bombay High Court, on which reliance is placed by Shri. Kshirsagar, Advocate for releasing the accused on bail, which are as under :-

i) Cri. Application (BA) No. 222 of 2021 (Shirish Prabhakar Band V/s. The State of Maharashtra), decided on June 23, 2021, decided by the Hon'ble Bombay High Court, Bench at Nagpur. In this case, considering the age of victim child 17 years, the Hon'ble High Court has granted bail to the accused for the offences punishable under Secs. 376 (1) (a) and 506 of the I.P.C. and Sec. 4 and 6 of the POCSO Act.

ii) Cri. Bail Application No. 1482 of 2021 (Laxman Arjun Dongre V/s. The State of Maharashtra), decided on 23rd June 2021, by the Hon'ble Bombay High Court. In this case, the accused, who was languishing in jail for more than four years without trial and he has to maintain his three daughters. So considering the documents on record, the accused was released on bail for the offences under Secs. 376, 506 of the I.P.C. and Sec. 12 of the POCSO Act, 2012.

iii) Cri. Bail Application No. 3572 of 2019 (Raj Kumar Kanchhedichal Raikwar), decided on 31st March, 2021, decided by the Hon'ble Bombay High Court. In this case the accused was arrested in the month of August- 2018 and the charge was not framed against him for a longer period. Considering the facts of the case and the documents on record, the accused was released on bail for the offences punishable

under Secs. 376 (2) (i) (j) of the I.P.C. and under Secs. 4, 6, 8 and 10 of the POCSO Act, 2012.

9) The facts of the above cited cases are different from the facts of the case in hand. So they are not applicable to the case in hand. Therefore, I do not find substance in the argument of Shri. R.D. Kshirsagar, learned Advocate that considering the above stated cases, the accused is also entitled to claim the bail, though the offences levelled against him are serious one. If the accused is released on bail, then he will pressurise or threaten to the victim child, complainant and prosecution witnesses. So also the possibility of absconding of the accused cannot be ruled out. Considering the reasons mentioned above, I am of the strong opinion that the accused is not entitled for release on bail under Sec. 439 of the Cr.P.C. Consequently, the present bail application is liable to be rejected. Therefore, I proceed to pass the following order.

ORDER

- 1) The application for grant of bail (Exh. 4) under Sec. 439 of the Cr.P.C., is hereby rejected.

Baramati.
27/07/2021

(A. A. SHAHAPURE)
Special Judge, Baramati.

CERTIFICATE

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

Name of Steno : S.K. Potdar (Stenographer H.G.)

Court Name : Shri. A.A. Shahapure,
Extra Joint District Judge & Addl.
Sessions Judge, Baramati.

Date : 27 /07/2021

Judgment signed by P.O. on : 27/07/2021

Judgment uploaded on : 28/08/2021