

MHRG170001062021



**ORDER BELOW EXH. 05**  
**IN SPECIAL POCSO CASE NO.09/2021**  
**KHANDESHWAR CR NO.260/2020**  
**THE STATE OF MAHARASHTRA V/S KALPESH SANJAY**  
**NIKAM**  
**( PASSED ON 30<sup>th</sup> DAY OF AUGUST, 2022 )**

This application is on behalf of the applicant /accused vide Section 439 of the Code of Criminal Procedure to enlarge him on bail.

2. This application is strongly opposed on behalf of prosecution as per reply Exh.06.

3. Points for the determination and my findings thereon for the reasons stated below ;

SR. NO.	POINTS	FINDINGS
I.	Whether grounds are justified to release the applicant/accused on bail vide Section 439 of the Code of Criminal Procedure ?	No.

II.	What Order ?	The application is Dismissed.
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### **REASONS**

4. Perused application, say filed. Heard learned advocate Smt.M.D.Gharat for the applicant/accused and learned A.P.P Smt.D.R.Patil for State. The victim was present with her mother.

#### **AS TO POINTS NO. I AND II :**

#### **BRIEF FACTS OF PROSECUTION :**

5. The informant is the cousin of victim. On 27.11.2020, the victim came at the house of informant. On that day, the daughter of other maternal aunt was also came at the house of informant. The victim is aged 15 years. On that day, informant noticed victim was calm and quiet as such, she asked to her. The victim started sobbing and disclosed that her cousin brother - applicant on 22.11.2020 at about 3.30 p.m., kept physical relations with her against her will. She got scared as such, she has not disclosed to anyone immediately.

6. On that count, the informant lodged the report Dated 30.11.2020 at Police Station, Khandeshwar. The Police Station Khandeshwar registered Crime No.260/2020 for the offence under Section 376 of the Indian Penal Code and Section 4, 8, 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO) against the present applicant/accused.

7. The applicant/accused is arrested on 30.11.2020 and produced before the Court on same day and initially remanded to police custody till 07.12.2020 and then remanded to judicial custody as per order Dated 07.12.2020. The accused is presently in judicial custody.

**THE COMPLIANCE OF SECTION 40 READ WITH RULES-4(13) AND 4(15) OF THE POCSO ACT - RIGHTS OF VICTIM -**

8. Recently Hon'ble High Court **in the case of Arjun Kishanrao Malge Vs. State of Maharashtra and others in Public Interest Litigation No.5 of 2021 Dated 08.04.2021** held that;

*“when an application is made before the Court on behalf of the accused, it shall be the duty of the accused to issue notice of hearing of such application to the child's family or as the case may be, the guardian, and where a legal counsel on behalf of the child is already on record, to such legal counsel, along with all*

*relevant documents and the record necessary for effective participation in the proceedings.”*

9. In pursuance of these directions, prosecution issued notice to the informant. The said notice is served to informant. The victim and her mother were appeared. Thus, this court has extended opportunity to them to have audience for hearing of this bail application. The victim and her mother have strongly objected to release the applicant on bail.

#### **WHETHER GROUNDS OF BAIL ARE MADE OUT ?**

10. At the outset, it is not in dispute that the victim is a minor. Her date of birth is 18.08.2006 as such, she is a child within definition of Section 2(d) of the Act. Thus the victim is aged 15 years on the date of incident.

11. The applicant is aged 24 years. The applicant is cousin brother of the victim. The incident took place on 22.11.2020. The victim due to lock-down was at her house. She lost her father prior to the incident. Her mother has gone outside for daily work. The applicant for his job was staying at her house since 15.11.2020. On the day of incident, it was holiday to the applicant for his work as such, he was at home.

12. The applicant stated to the victim to massage him. The victim when trying to massage him that time, he hold her and he gouged her mouth. The applicant had physical relations with her against her will forcibly. The victim got scared and has not stated to anyone. She disclosed it to informant on 27.11.2020.

13. In the light of relationship between the applicant and the victim, it is apparent that he is a cousin brother. He was staying at the house of victim. On the day of incident, the victim was alone at the house. Thus the applicant was in a position of trust and he ought to have taken care of the minor. The applicant kept physical relations with her as such, it is a aggravated form of penetrative sexual assault within ambit of Section 5 (p) punishable under Section 6 of the Act. It provides punishment of imprisonment not less than 20 years but which may extend to imprisonment for life with effect from 16.08.2019.

14. The investigation of this crime is over and charge-sheet is filed. The applicant is behind bar since 30.11.2020 and for about more than one and half year. The offence is serious one. The victim is cousin sister of the applicant. The medical examination report coupled with police papers, it appears substantial evidence against the applicant.

15. Learned advocate of applicant vehemently argued that the applicant is unmarried, aged 22 years and he is a young person. He is falsely roped in the present crime due to property disputes. He is behind bar and it would take considerable time for commencement of hearing of the case. Thus, the applicant prayed to release him on bail.

16. Per contra, the mother of victim was present at the time of hearing of bail application. She submitted that the members of family of the applicant are pressurizing to them to settle the issue. Thus according to her, there are chances to tamper the prosecution evidence.

17. In the light of this submission since the applicant is nearest relative then in that eventuality, they are likely to tamper the prosecution evidence and witnesses. The imposition of condition will not serve the purpose. The applicant is falsely roped due to property dispute speaks far away from the truth in the light of manner of commission of offence. Thus by filing of charge-sheet and the applicant is behind bar for a considerable time are not the grounds to extend him on bail looking to the severity of offence. The applicant does not deserve for bail. I answer Point No.I in the negative. With this, I pass following order ;

**ORDER**

1.	The application for regular bail vide Section 439 of the Code of Criminal Procedure on behalf of the applicant is dismissed.
2.	Inform to concerned Police Station accordingly.
	Dictated and pronounced in Open Court.

**Place : Panvel.**

**Date : 30.08.2022**

**( K.G. Paldewar )  
Additional Sessions Judge,  
Panvel**

Arguments heard on	16 <sup>th</sup> day of August, 2022
Judgment/Order delivered on	30 <sup>th</sup> day of August, 2022
Dictated on	30 <sup>th</sup> day of August, 2022
Transcribed on	30 <sup>th</sup> day of August, 2022
Checked and signed on	30 <sup>th</sup> day of August, 2022

**CERTIFICATE**

I affirm that the contents of this PDF file Judgment/Order is same and as per the original Judgment/Order.

Name of the Stenographer : P.S.Mhatre  
Name of the Court : Additional Sessions Court,  
Panvel  
Date of Judgment/Order : 30.08.2022  
Judgment/Order signed on : 30.08.2022  
Presiding Officer : K.G. Paldewar  
Judgment/Order uploaded on : 30.08.2022