

MHRG170001062021



IN THE COURT OF ADDITIONAL SESSIONS JUDGE, PANVEL RAIGAD
ORDER BELOW EXHIBIT 13 IN SPECIAL (POCSO) CASE NO.9/2021
(Dated 07/10/2024)

1] Applicant Kalpesh Sanjay Nikam has filed this bail application in C.R.No.260/2020 registered with Khandeshwar police station for the offence p/u/sec 376 of IPC and u/sec.4,8,12 of POCSO Act, 2012.

2] According to prosecution informant resides at Turbhe naka, Navi Mumbai. Maternal aunt of the informant resides at Sukapur, New Panvel alongwith her two sons and a daughter the victim. On 27/11/2020 the victim had been to Andheri to meet her maternal cousin sister. That time informant was not talking to anybody. On inquiry with her she started crying and informed that, during her stay, cousin brother the accused on 22/11/2020 at 03.30 p.m. committed penetrative sexual assault forcefully.

3] On this report aforesaid crime was registered. Accused was arrested on 30/11/2020. Since 07/12/2020 he is in judicial custody. This is his third bail application. CA report is received and it is negative. Accused is in jail since 30/11/2020. He is falsely implicated in the crime. His further detention is not required. He is ready to abide all conditions and pray for grant of bail.

4] Prosecution has filed say at Exh.14 and opposed the bail. The victim and the informant are present at the time of hearing of the bail application, which was a in-camera proceeding. Accused has placed on record 7/12 extract of S.No.5/3/A, 33/1-B and 5/3/C.

5] Heard Ld.Adv.Smt.Milka Gharat and Spl PP Smt.Wade.

6] At the outset it be noted that, already previous two bail applications were rejected on merit. The only ground raised in this application is about CA report being received and it is negative.

7] Ld.Advocate for the accused submitted that, there was delay in the FIR. According to her accused is falsely implicated on account of dispute of immovable property.

8] C.A.report is not a substantive piece of evidence but it is corroborative in nature. Prima facie the substantive piece of the evidence in the charge-sheet is the statement of the victim. Hon'ble Apex Court in the case of Madan Gopal Kakkad Vs. Nawal Dubey 1992 SCC (3), 204, laid down that, "*rape is not a medical condition, but it is an offence*". As already bail applications were rejected on merit, there is no change in circumstance to entertain the present application. The allegations are of serious in nature and the apprehension of the victim and her relatives that they will be threatened, has substance. Hence, following order is passed.

ORDER

1. Application is rejected.
2. Inform concerned police station.
3. Copy of order be sent to Taloja jail by E-mail.

Panvel
Date :-07/10/2024.

(Jairaj D.Wadne)
Additional Sessions Judge,
Panvel-Raigad

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

Name of the stenographer : S.J.Sheth
Name of the Court : Additional Sessions Judge,
Panvel Raigad
Date of dictation (direct) : 07/10/2024
Order signed by the P.O.on : 07/10/2024
Order uploaded on : 08/10/2024