

MHRG170007862024



ORDER BELOW EXH. 07
IN SPECIAL POCSO CASE NO.42/2024
TALOJA POLICE STATION C.R.NO.54/2024
RAJANI KISHOR FAKIR -Vs. -THE STATE OF MAHARASHTRA.
(PASSED ON 28th DAY OF MARCH, 2025.)

This application is on behalf of the accused/applicant – Rajani Kishor Fakir vide Section 439 of the Code of Criminal Procedure to enlarge her on bail.

2. This application is strongly opposed on behalf of prosecution as per reply Exh.09.

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 ?	Yes
II.	What Order ?	The application is Allowed.

REASONS

4. Perused application, say filed. Heard learned advocate Shri.Raj Kamble and Smt.Smita Patil for the applicant/accused and learned A.P.P Smt.P.P.Wade for State. Heard the investigating officer.

AS TO POINTS NO. I AND II :

BRIEF FACTS OF PROSECUTION :

5. The present prosecution is based on raid effected by Anti-Human Trafficking Squad in pursuance of secret information received. The raid is effected on 08.02.2024 with the help of dummy customer. During this trap, four victims were found and name of accused No.1 and 2 are disclosed. The police seized the mobile, the cash and other articles under panchnama.

6. On that count, the informant lodged the report Dated 09.02.2024 at Police Station, Taloja. The Police Station officer, Taloja registered Crime No.54/2024 for the offence under Section 370, 34 of the Indian Penal Code, under Section 3, 4, 5 of the Prevention of Immoral Trafficking Act and Section 3, 4, 8, 12 of the Protection of Children from Sexual Offences Act against accused No.1 and 2 and then involvement of present applicant is made out.

7. The applicant/accused is arrested on 04.03.2024 and produced before the Court on the same day and remanded to police custody till 06.03.2024 and thereafter remanded to judicial custody as per order Dated 06.03.2024. The applicant/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. 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, this court issued notice to the victims in earlier bail application No.163/2024. The investigating officer secured presence of three victims. The forth victim is minor. This court extended audience to three victims who are major by age in earlier bail application.

10. The involvement of present applicant was in pursuance of the statement of minor victim recorded by learned magistrate. Therefore notice of this bail application was not issued to the victims who are major by age. The minor victim is shifted to her native in West Bengal and she is not staying here. Therefore the prosecution could not secure presence of minor victim from West Bengal State for hearing of this bail application.

11. The hearing of this bail application conducted in camera.

WHETHER GROUNDS OF BAIL ARE MADE OUT ?

12. At the outset, in the light of recitals of FIR, it appears there are four victims of which one of the victim is minor. The minor victim is aged 17 years as such, she is a child within the definition of Section 2(d) of the POCSO Act. The prosecution is based on secret information received and the raid effected with the help of dummy customer.

13. The victims were rescued from the clutches of accused No.1 and 2. Initially, the minor victim was kept at rehabilitation center and subsequently her parents have taken her custody and shifted her at native at West Bengal. Rest three victims are major by age. The statements of all four victims are recorded before learned

magistrate vide Section 164 of the Code of Criminal Procedure. On perusal of their statements, it appears that the victims who are major by age, have not raised grievance against anyone including present applicant. The involvement of present applicant in pursuance of statement of minor victim that this applicant at Raghuleela Mall, Vashi insisted her for keeping physical relation with the customers in lieu of money to the tune of Rs.1500 to Rs.2000/- per customer.

14. Though the said minor victim was a child, however she was aged 17 years at the time of incident as such, she has sufficient age of understanding. The investigation of crime is set at rest and charge-sheet is filed. The accused No.1 and 2 are released on bail by this court vide Criminal Bail Application No.163/2024 Dated 12.03.2024. The present applicant is behind bar for more than one year. Looking to the nature of offence and investigation is over coupled with age of victim as such her further detention behind bar is unwarranted.

15. This applicant has criminal antecedents. This applicant is enlarged on bail in the said crime registered at Vashi Police Station as per order Dated 30.08.2023 and 27.06.2024. In the light of foregoing, parameters for grant of bail to her are made out as such her criminal antecedents will not be hurdle in grant of bail in this crime. She is ready to furnish surety and to abide the

conditions. On all these grounds, the applicant deserves for bail. I answer Point No. I in the affirmative. 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 accused/applicant – Smt. Rajani Kishor Fakir is allowed.
2.	Applicant/accused be released on bail on furnishing P.R. and S.B. of Rs.50,000/- each (Rs. Fifty Thousand) with one surety in the like amount on the following terms and conditions ;
i.	Applicant/accused shall assist to Investigating Officer whenever called under written intimation.
ii.	Applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the accusations against them so as to dissuade them from disclosing such facts to the Court or to any police officer.

iii.	Applicant/accused shall not tamper prosecution evidence in any manner.
3.	A soft copy of this bail order be forwarded to the applicant/accused through Superintendent, Kalyan-Aadharwadi Jail by e-mail for information in view of observation of Hon'ble Apex Court in the case of In Re Policy Strategy For Grant of Bail in SMWP (CRIMINAL) NO.4/2021, Dated 31.01.2023.
4.	Inform to concerned Police Station accordingly.
	Dictated and pronounced in Open Court.

Place : Panvel.

Date : 28.03.2025.

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

Arguments heard on	26 th Day of March, 2025.
Judgment/Order delivered on	28 th Day of March, 2025.
Dictated on	28 th Day of March, 2025.
Transcribed on	28 th Day of March, 2025.
Checked and signed on	28 th Day of March, 2025.

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 : K.N.Lokhande
Name of the Court : Additional Sessions Court,
Panvel
Date of Judgment/Order : 28.03.2025.
Judgment/Order signed on : 28.03.2025.
Presiding Officer : K.G. Paldewar
Judgment/Order uploaded on : 28.03.2025.