

Special (POCSO) case No.67/2021
Khopoli C.R.No.78/2021
1 The State V/s. Lingappa Mallaya Pujari
Exhibit No. 09

MHRG170008472021



ORDER BELOW EXH. 09
IN SPECIAL (POCSO) CASE NO.67/2021
KHOPOLI C.R.NO.78/2021
THE STATE OF MAHARASHTRA V/S. LINGAPPA MALLAYA
PUJARI
(PASSED ON 04th DAY OF OCTOBER, 2022)

This successive 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.10.

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

SR. NO.	POINTS	FINDINGS
I.	Whether application is maintainable?	No.
II.	Whether grounds are justified to release the applicant/	No.

	accused on bail vide Section 439 of the Code of Criminal Procedure ?	
III.	What Order ?	The application is Dismissed.

REASONS

4. Perused application, say filed. Heard learned advocate Smt.M.D.Gharat for the applicant/accused and learned A.P.P Smt.P.P.Wade for State. Heard informant.

AS TO POINTS NO. I AND II :

BRIEF FACTS OF PROSECUTION :

5. The informant is mother of victim. The victim is aged 13 years 10 months. Her date of birth is 29.04.2007. The victim is partly mentally disabled. The husband of informant is expired back to 3 years. On 24.03.2021, at about 7.30 a.m., informant has gone to other village for work. At that time, her 3 children were at home. She came back in the evening at 6.00 p.m. The victim seems extreme calm to the informant. Later the informant at about 9.00 to 9.30 p.m. asked her, that time

victim started sobbing and disclosed that in the noon at about 1.00 to 1.30 p.m, the applicant took her on a two wheeler in a isolated place in a forest. The applicant pushed her in the shrubs and removed her clothes. The applicant forcibly kept physical relations with her. The applicant threatened her if disclosed to others. The neighbourers have witnessed her voice of sobbing as such they rushed over there near to the spot. The applicant fled away.

6. On that count, the informant lodged the report Dated 26.03.2021 at Police Station, Khopoli. The Police Station Khopoli registered Crime No.78/2021 for the offence under Section 363, 354-B, 376(2)(i)(j)(l) of the Indian Penal Code, Section 4, 8, 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) against the present applicant/accused.

7. The applicant/accused is arrested on 26.03.2021 and produced before the Court on same day and initially remanded to police custody till 01.04.2021 and extended police custody till 03.04.2021 and then remanded to judicial custody as per order Dated 03.04.2021. 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 her. Initially, the victim and her mother were appeared. Thus, this court has extended opportunity to victim and her mother to have audience for hearing of this bail application. At that time, they have strongly objected to the application for bail. The advocate of applicant argued this application on next date, that time the mother of victim was present. At that time, she has no objection to release the applicant on bail.

MAINTAINABILITY OF APPLICATION :

10. On perusal of the proceeding, it appears that the charge-sheet is filed in this case on 24.05.2021. The first application for bail on behalf of accused/applicant vide Exh.4 is dismissed by my learned predecessor as per elaborate order Dated 04.08.2021. Now, the present applicant moved successive application for bail vide Exh.9.

11. Now on perusal of the present application and the earlier application for bail vide Exh.4, it appears that grounds of application are same and there is no change in the circumstance to entertain successive application for bail.

12. At this stage, it is relevant to cite the observation of Hon'ble Apex Court in the case of **Kalyan Chandra Sarkar V/s. Rajesh Ranjan @ Pappu Yadav AIR 2005 SUPREME COURT 921** that, *'even though there is a room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier can move a subsequent application.'*

13. Relying upon this observation applied to the facts of present case, there is no change in circumstance to entertain this application for bail. Thus this application for bail is not maintainable. I answer Point No.I in the negative.

WHETHER GROUNDS OF BAIL ARE MADE OUT ?

14. At the outset, it is not in dispute that the date of birth of the victim is 29.04.2007. The age of victim is 13 years 10 months on the date of incident. Thus the victim is a girl child within definition of Section 2(d) of the Act.

15. The incident took place on 24.03.2021 at about 1.00 to 1.30 p.m. The mother of victim has gone outstation for work. The victim and her siblings were at home. The victim is not a fully developed child. The victim is a partially mentally disabled child. The victim appeared initially for hearing of this application. She seems to be simpleton.

16. The applicant is aged 37 years old. The applicant is a married and he has two sons. Thus looking to the involvement of applicant and his act upon a minor partially disabled child apparently he does not deserve for leniency to extend him on bail. The consent of mother of victim to release the applicant on bail in that eventuality is immaterial.

17. The investigation of this crime is over. The charge-sheet is filed adding further sections 3(1)(w)(i)(ii) and 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocity) Act. The charge-sheet was filed at the time of deciding first application for bail and subsequently there is no change in circumstance as such this application is not maintainable. The grounds are not justified to extend the applicant on bail. I answer Point No.II 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 : 04.10.2022

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

Arguments heard on	17 th Day of September, 2022
Judgment/Order delivered on	04 th Day of October, 2022
Dictated on	04 th Day of October, 2022
Transcribed on	04 th Day of October, 2022
Checked and signed on	04 th Day of October, 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 : 04.10.2022
Judgment/Order signed on : 04.10.2022
Presiding Officer : K.G. Paldewar
Judgment/Order uploaded on : 04.10.2022