

MHRG170010982022



COMMON ORDER BELOW EXH. 5 TO 13 AND 16
IN SPECIAL POCSO CASE NO.102/2022
THE STATE OF MAHARASHTRA V/S VIRAJ RAMESH BHOIR
AND OTHERS
(PASSED ON 16th DAY OF JULY, 2022)

This application is on behalf of the applicants/accused No.5 to 13 and 16 vide Section 439 of the Code of Criminal Procedure to enlarge them on bail.

2. This application is strongly opposed on behalf of prosecution as per reply Exh. 18 to 27.

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 applicants/accused No.1 to 10 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.Pooja Kondekar for the applicants/accused No.1, 2, 4 and 5, advocate Smt.Shivani Kondekar for applicants/accused No.8, 9, 10, advocate Shri.Amey More for applicant No.3 and advocate Shri.Ankit Bangera for applicants No.6 and 7. Heard learned A.P.P Smt.P.P. Wade for State. The victim is present with her mother. Heard advocate for victim.

AS TO POINTS NO. I AND II :

BRIEF FACTS OF PROSECUTION :

5. The victim is informant. Her age on the day of lodging report was 13 years 5 months. She is studying in 8th standard. She stays with her parents. She uses cell phone of her mother. In the month of March-April 2021, she opened her Instagram account. In the month of May 2021, the accused No.7 - Rutik texted message to her. Thereafter, they were in communication on Instagram. At the instance and threat of this accused, the victim forwarded her nude photo to him through Instagram. The accused made request

to her to see her to which she refused. At that time, this accused No.7 threatened her to make these photos and videos viral to his friends. Then the chatting between them is stopped. After 15 days, accused No.10-Chaitanya texted to her message on Instagram and stated her that her nude photo and videos are with him and to meet him or else he would make it viral. Then the victim met to this accused at about 1.30 a.m. in midnight, that time this accused sexually assaulted her and touched to her private part. This sexual assault was repeated for 2 to 3 times by this accused with her.

6. Further after some days, the accused No.4-Somesh texted to her a message on Instagram that accused Chaitanya forwarded her nude pics and videos and this accused called her to see him, but she has not met him. After 8 to 10 days accused No.5-Jitesh texted her message on Instagram and threatened her to make her nude photo and videos viral if his video call is not received. Then the victim received his video call and in this video call she has removed her clothes at the instance of this accused and she herself and the accused were nude through this video call. This accused took out screen shots of this video call and sent her. This accused oftenly threatened her to meet him and he used to come near to her home.

7. Further after 15 to 20 days, the accused No.9-Ganesh Thorave texted her message on Instagram to sent her nude pic to

which she has forwarded. This accused called her near one temple in the village and she met him in the midnight at about 2.00 a.m. This accused committed penetrative sexual assault upon her, but she was scared and came back to her house. After 10 to 15 days, accused No.6-Swapnil texted her message on Instagram and made her video call. During this conversation the victim as well as this accused were nude and this accused forwarded her nude pic of this conversation. Accused No.3 - Ashutosh contacted victim through Instagram. He made her video call wherein at the instance of this accused she was stripped. This accused recorded her video of nudity and forwarded her.

8. Further after 2 to 4 days, accused No.8 contacted her through Instagram and sent her nude video which was recorded by accused No.3-Ashutosh. The accused No.8 conceded to her that the said video clip was forwarded to her by accused No.3-Ashutosh. The accused No.3 and 8 have made request to her for sexual favour, then she has blocked to them. The accused No.10-Chaitanya contacted to her through Instagram. She received video call of this accused wherein at the instance of this accused, she was stripped her clothes. This accused has shown his private part to her during this video call. Accused No.1-Viraj contacted her through Instagram and video call wherein the instance of stripping clothes and recording of her nude photo was done by him. This accused called her at farmhouse wherein both of them were two

hours inside the room. At that time, this accused could not have done sexual intercourse with her due to her menses.

LODGING OF REPORT AT POLICE STATION -

9. On 17.04.2022, it was meeting of the community at her village and in the said meeting, her uncle was present over there. He got the message from villagers about the nude video and photos of her as such, he asked to the victim. The uncle of victim then disclosed this incident to her parents. Then they have been to police station to lodge the report.

10. On that count, the informant/victim lodged the report Dated 18.04.2022 at Police Station, Karjat. The Police Station Karjat registered Crime No.115/2022 for the offence under Section 376-DA, 354-D of the Indian Penal Code and Section 4, 8, 13, 14 of the Protection of Children from Sexual Offences Act, 2012 and Section 66 and 67 of the Information Technology Act against the applicants/accused.

NAMES OF THE ACCUSED IN THE CHARGE-SHEET -

11. The following accused are chargesheeted in the above crime-

- 1) Viraj Ramesh Bhoir

- 2) Chaitanya Bhaskar Thorave,
- 3) Ashutosh Ashok Tamhane,
- 4) Somesh Jayram Thorave,
- 5) Jitesh Arjun Deshmukh,
- 6) Swapnil Ganesh Misal,
- 7) Rutik Jaywant Thorave,
- 8) Pradip Sambhaji Tamhane,
- 9) Ganesh Balu Thorave,
- 10) Chaitanya Sunil Bhagwat,

DATE OF ARREST OF ACCUSED -

12. Accused No.1 to 10 are arrested on 18.04.2022 and produced before the court on 19.04.2022. Initially they are remanded to Police custody till 25.04.2022 and then remanded to judicial custody as per order Dated 25.04.2022. The accused are presently in judicial custody.

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

13. 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.”

14. In pursuance of these directions, prosecution issued notice to the victim. The said notice is served to her. The victim and her mother are appeared. Thus, this court has extended opportunity to the victim to have audience for hearing of this bail application. She has engaged private advocate. Learned advocate for victim argued at length and placed on record the written notes of argument vide Exh.37. Thus the victim has strongly opposed the bail application of accused.

ROLE OF EACH ACCUSED AS PER CHARGE-SHEET -

15. The accused No.1 contacted to the victim through Instagram, wherein he recorded her video after stripping her clothes in nude. This accused stored this video clip in a Google Folder App by way of hide application. This folder is password protected wherein it is noticed 14 videos of this victim. These videos were forwarded by this accused to other accused. This

accused has called upon to the victim at a farmhouse. He committed sexual assault upon her.

16. The accused No.2-Chaitanya has forwarded nude pics and video to the victim through Instagram. He received the said nude video and pic from accused Jitesh through application 'Share it'. This accused committed penetrative sexual assault upon her by giving threat to her to make viral of her nude videos and photos. The accused No.3-Ashutosh contacted her through video call and put her to strip her clothes and recorded her nude pics. The said recordings were forwarded to her.

17. The accused No.4-Somesh has contacted her through Instagram and facebook. He received her nude videos sent by accused - Chaitanya Thorave. The accused No.5-Jitesh contacted her through Instagram. He made her video call. This accused forwarded her nude photos and videos and threatened her. This accused compelled her to strip her clothes and recorded her videos and screen shots and sent to the victim. He threatened to the victim to met her. The accused No.6-Swapnil has also contacted her through Instagram. He made her video call and compelled her to strip her clothes and then recorded her video and forwarded to the victim her nude pics.

18. The accused No.7-Rutik contacted her through

Instagram and compelled her to send her nude photo and video. He also threatened her to make these videos and photos viral. The accused No.8-Pradip contacted her through social media. He forwarded to victim her nude video which was recorded by accused - Ashutosh Tamhane. This accused made demand of sexual favour to her.

19. The accused No.9-Ganesh Thorave contacted her through Instagram and facebook account and compelled her to send her nude photo. He met her near to one temple in the village. This accused during this meeting removed her clothes and touched to her private parts thus committed the offence of rape. The accused No.10-Chaitanya contacted her through Instagram and facebook account. This accused through video call compelled the victim to remove her clothes as well as he has shown his private parts to her during his conversation.

WHETHER GROUNDS OF BAIL ARE MADE OUT ?

20. At the outset, it is not in dispute that the victim is a minor as such she is a child within definition of Section 2(d) of the Act. Her date of birth is 13.11.2008. At the time of incident she was studying in 8th standard. The victim and accused hails from same village except accused No.1-Viraj and accused No.5-Jitesh. However, these two rest accused hails from the same Taluka

proximate to the village of victim.

21. Learned advocate for accused No.8, 9, 10 advocate Smt.Kondekar vehemently argued that the victim has chosen to open the Instagram account and for the opening of this account of social media the age of the account holder must be 18. Then in that eventuality her age is not correctly mentioned. The victim has disclosed the incident after one year. Looking to the age of the victim and the age of the offender and there is no force used by any of the accused in commission of offence, then in that eventuality accused deserve for bail.

22. To buttress her submission, she relied on observation of **Hon'ble Gujarat High Court in the case of Sunilkumar Virjibhai Damor V/s. State of Gujarat, 2018 ALL MR (Cri) JOURNAL 502** wherein it is held that "*Tutoring of prosecutrix clear from conduct of informant who was continuously hinting prosecutrix while recording of her statement. Applicant appears to be falsely implicated in view of disputed leaving certificate and admission of victim in school. Thus the bail application of the accused was granted.*"

23. Learned advocate for accused No.1, 2, 4 and 5 as well as for accused No.3 vehemently argued that looking to the nature of offence attributed against these accused in the light of recitals of FIR, they need to be released on bail since there is no allegations

against them in respect of rape on the victim.

24. Advocate Smt.Kondekar further relied on the observation of **Hon'ble Bombay High Court in the case of Sunil Mahadev Patil V/s. State of Maharashtra in Bail Application No.1036 of 2015 Dated 03rd August, 2015** wherein it is laid down the parameters to consider bail applications wherein a boy and a minor girl are in love with each other and chose to live together without consent of their parents.

25. Learned advocate for accused No.6 and 7 Shri.Bangera vehemently argued that the accused are at young age and they have aspiring carrier. These two accused are skilled in sports as such put it on record the certificates of their achievements in sports. Further he buttress on the observation of **Hon'ble Keral High Court in the case of Natarajan V/s. State of Keral 2022 DGLS (Keral) 314** wherein, the Hon'ble High Court pleased to release the accused on bail since the bail is rule and jail is exception.

26. Learned A.P.P Smt.P.P.Wade strongly opposed bail application and drawn attention of the court to a substantial evidence against accused from the charge-sheet. She relied on the observation of **Hon'ble Gujarat High Court in the case of Nawaz Shabirbhai Safiya V/s. State of Gujarat LAWS(GJH) 2022 3 217,**

Thippeswamy @ Thipeshi V/s. State by Jagalur P.S. LAWS(KAR) 2022 3 9 AND Govind V/s. State of U.P LAWS (all) 2022 4 28.

27. Learned advocate appeared for victim placed on record written notes of argument vide Exh.37. He vehemently argued that filing of charge-sheet does not lessen the allegations. To buttress his submission, he relied on the observation of **Hon'ble Apex Court** in the case of **Aparna Bhat and others Vs. State of Madhya Pradesh and another in Criminal Appeal No.329/2021 (SLP (Crl) No.2531 of 2021)(Arising out SLP (Crl) Diary No.20318 of 2020 Dated on 18th March, 2021.**

28. In the light of rival contentions on behalf of advocates of accused and learned A.P.P and assist to learned A.P.P., it is not in dispute that the victim is a minor. It is settled position of law that consent of minor victim is immaterial. The age of the accused ranging between 20 to 28 years. Today this young aged persons are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and woman. In this case, initially the accused No.7 - Rutik contacted the victim through Instagram. He firstly recorded her nude video and photos. He circulated the nude photo and nude video of the victim to other accused. Likewise, other accused too have contacted her through Instagram and facebook account. They

shared her nude pics and her nude videos. She was given threat to meet them or else these videos and photos will make it viral by them. As observed above, these accused except accused No.1 and 5 are resident of the same village and rest accused No.1 and 5 residing in the same Taluka and their residence is proximate to the village of victim. They contacted her oftenly through social media with an only objective of sexual harassment, sexual assault and sexual favours.

29. The present case is not in a respect of a boy and minor girl are in love to each other so as to observe the parameters for grant of bail as laid down by **Hon'ble High Court in the case of Sunil Patil (supra)**. Herein this case, the accused *interse* shared nude photos and nude videos of the victim. Thus these accused have exploited the situation of possessing her nude photos and videos. The accused No.1-Viraj stored her 14 nude videos in a hidden application with password protection. He circulated her videos and photos with the other accused.

30. Needless to mention, some of the accused have no allegations of penetrative sexual assault, but the intention of these rest accused is obliquely motivated for their sexual desire. The intention of these accused from the material available on record to exploit the minor sexually. The foremost object of this POCSO Act to protect children from offenses of sexual assault, sexual

harassment and pornography. The investigating officer filed a charge-sheet wherein it transpired sufficient material against accused. The incident is reported later by the victim that does not mean this delay in the offences of sexual assault fatal to the prosecution at this stage of deciding application for bail. In fact, delay in lodging report in sexual offences against women at this stage of bail cannot be looked into as a vital ground to extend accused on bail.

31. The victim is put at sexual exploitation by each of the accused either by way of sharing photos, videos through social media sometimes shared with her and sometimes with the accused. These accused have compelled her to meet them and issued threats to her. The investigating officer seized cell phones of the accused and also collected the data inside it. It is forwarded to the Forensic Laboratory and the report of the Forensic Laboratory is yet to receive. This crime is nothing but, exploitation of the child with the help of social media platform by keeping her nude photo and videos in hand with the accused. Thus the offence is serious one. I am in conformity with the submission of learned A.P.P and assist to learned A.P.P that by filing of charge-sheet severity of the offence could not get lessen.

32. The offence is serious one. No doubt, the accused are in their young age ranging between 20 to 28 years, however

looking to their acts and the severity of offence, there is no ground of leniency to extend them on bail in such offences. By showing leniency to these accused to exercise discretion to extend them on bail is nothing but to frustrate the object of this POCSO Act. The accused are techno savvy and they know how to handle the gadgets as such, they have misused the cell phones with the help of social media and exploited the victim. Thus this is not a fit case to extend accused No.1 to 10 on bail. Accused and the victim hails from the same village as such, the possibility of tampering of evidence cannot be ruled out. In the light of reason foregoing, accused do 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 applicants is dismissed.
2.	Inform to Police Station Karjat accordingly.
	Dictated and pronounced in Open Court.

Place : Panvel.

Date : 16.07.2022

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

Arguments heard on	05 th day of July, 2022
Judgment/Order delivered on	16 th day of July, 2022
Dictated on	16 th day of July, 2022
Transcribed on	16 th day of July, 2022
Checked and signed on	16 th day of July, 2022

C E R T I F I C A T E

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 : 16.07.2022
Judgment/Order signed on : 16.07.2022
Presiding Officer : K.G. Paldewar
Judgment/Order uploaded on : 16.07.2022