

MHRG170010982022



ORDER BELOW EXH. 40
IN SPECIAL POCSO CASE NO.102/2022
KARJAT POLICE STATION C.R.NO.115/2022
THE STATE OF MAHARASHTRA V/S VIRAJ RAMESH BHOIR
AND OTHERS
(PASSED ON 01st DAY OF OCTOBER, 2022)

This successive application is on behalf of the applicant/ accused - Chaitanya Sunil Bhagwat 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.42.

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

SR. NO.	POINTS	FINDINGS
I.	Whether the application for bail is maintainable?	No.

II.	Whether grounds are justified to release the applicant/accused on bail vide Section 439 of the Code of Criminal Procedure ?	No.
III.	What Order ?	The application is Dismissed.

REASONS

4. Perused application, say filed. Heard learned advocate Shri.Prasad Patil for the applicant/accused and learned A.P.P Smt.P.P.Wade for State.

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 was studying in 8th standard. She stays with her parents. She used cell phone of her mother. In the month of March-April 2021, she opened her Instagram account. Initially she got acquaintance with accused

No.7 through social media. She shared her nude photo with him. Further these photos were shared with other accused. The other accused also contacted her through social media and shared nude videos and photos with her. The role of present accused No.10 is to the extent of contact to 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 their conversation.

6. On that count, the informant 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-D, 354-D of the Indian Penal Code and Section 4, 8, 13, 14 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and Section 66 and 67 of the Information Technology Act present applicant/accused and other accused persons.

7. The applicant/accused is arrested on 18.04.2022 and produced before the Court on 19.04.2022 and initially remanded to police custody till 25.04.2022 and then remanded to judicial custody as per order Dated 25.04.2022. 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 victim. The said notice is served to her. The victim failed to appear. Thus, this court has extended opportunity to the victim to have audience for hearing of this bail application, but she has not chosen to appear.

MAINTAINABILITY OF THE APPLICATION :

10. The present applicant filed earlier regular bail

application before this court. The said application is decided by this court as per order Dated 16.07.2022 and thereby dismissed the said application. Subsequently present application is filed on 16.08.2022 i.e. after a period of one month of the rejection of earlier application for bail. Then in that eventuality, it is to be seen the change in circumstances to move subsequent application.

11. 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.'

12. Relying upon this observation applied to the facts of present case, it is apparent that there is no change in circumstance in order to entertain successive application for bail within a one month of its rejection of earlier application. Thus this application is not maintainable. I answer Point No.I

in the negative.

WHETHER GROUNDS OF BAIL ARE MADE OUT ?

13. At the outset, it is not in dispute that the date of birth of victim is 13.11.2008. In the light of date of incident, the victim girl is a child within definition of Section 2(d) of the Act.

14. The application for bail is not maintainable as observed above. This court observed seriousness of this crime in earlier order upon application for bail of this applicant including others by elaborate order Dated 16.07.2022. In the light of observation recorded in earlier order, there is no necessity to reiterate it. This application is on the same set of grounds as such, it is not a fit case to extend the applicant on bail. I answer Point No.I in the negative. With this, I pass following order ;

ORDER

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

Place : Panvel.

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

Date : 01.10.2022

Arguments heard on	02 nd and 15 th day of September, 2022
Judgment/Order delivered on	01 st day of October, 2022
Dictated on	01 st day of October, 2022
Transcribed on	01 st day of October, 2022
Checked and signed on	01 st day of October, 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 : 01.10.2022
Judgment/Order signed on : 01.10.2022
Presiding Officer : K.G. Paldewar
Judgment/Order uploaded on : 01.10.2022