

Special Pocso case No.115/2022
Neral C.R.No.142/2022
1 The State V/s. Piyush Mangesh Parmar
Exhibit No. 06

MHRG170012362022



ORDER BELOW EXH. 06
IN SPECIAL POCSO CASE NO.115/2022
NERAL C.R.NO.142/2022
THE STATE OF MAHARASHTRA V/S. PIYUSH MANGESH
PARMAR
(PASSED ON 03rd DAY OF OCTOBER, 2022)

This 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.07.

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.
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REASONS

4. Perused application, say filed. Heard learned advocate for the applicant/accused and learned A.P.P for State.

AS TO POINTS NO. I AND II :

BRIEF FACTS OF PROSECUTION :

5. The informant is mother of victim. The victim is aged 15 years 04 months. She was studying in 10th standard. On 12.05.2022, the victim was not found as such, informant lodged missing report. The victim was traced. In the light of her statement, she got acquaintance with the applicant. She is in love relations with him. On 12.05.2022, victim and the applicant eloped. They stayed at the house of maternal aunt of the applicant. On 13.05.2022, they stayed in a lodge after offering religious prayer. During 13.05.2022 to 16.05.2022, the applicant under pretext of promise to marry kept physical relations with the victim against her will at the said lodge.

6. On that count, the informant lodged the report Dated 13.05.2022 at Police Station, Neral. The Police Station Neral registered Crime No.142/2022 initially for the offence under Section 363 of the Indian Penal Code against unknown person. Later on investigating officer added 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 17.05.2022 and produced before the Court on 18.05.2022 and initially remanded to police custody till 21.05.2022 and then remanded to judicial custody as per order Dated 21.05.2022. 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
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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. The victim and her mother failed to appear. Thus, this court has extended opportunity to the victim and her mother to have audience for hearing of this bail application, but they have not chosen to appear.

WHETHER GROUNDS OF BAIL ARE MADE OUT ?

10. At the outset, it is not in dispute that the victim is 15 years 04 months girl as such she is a child within definition of Section 2(d) of the Act. In the light of recitals of F.I.R and on perusal of charge-sheet coupled with submissions on behalf of learned advocate of applicant and learned A.P.P, it is apparent that the applicant is aged 21 years. He is unmarried. The victim is aged 15 years 04 months. They have acquaintance to each other. They were in love relations. On the day of incident, they eloped. Initially they stayed at the house of maternal aunt for one day and later on in a lodge for 3 days.

During their stay, the applicant kept physical relations with her.

11. The investigation of this crime is over. The charge-sheet is filed. They were in love relations as such eloped. There is no use of force in commission of the crime. The applicant is behind bar since 18.05.2022. Learned advocate of applicant placed on record the photographs of the victim and the applicant which transpires their love relations.

12. At this stage, it is relevant to cite the observation of Hon'ble Bombay High Court in the case of **Aniruddha Radhesham Yadav V/s. State of Maharashtra in Criminal Bail Application No.2632 of 2019 Dated 09.01.2020** that *"the conduct of the victim is indicative of the fact that she had left the home of her parents by her own will and that she had surrendered to the physical desires of the applicant out of her love and affection for him. The applicant under the purview of POCSO Act is a minor, however the facts of the present case indicate that she had sufficient knowledge and capacity to know full import of what she was doing and had only thereafter voluntarily joined the complainant."*

13. Further the observations of Hon'ble Bombay High Court in the case of **Sunil Mahadev Patil V/s. State of**

Maharashtra, ABC 2016(I) 34 BOM decided on 03.08.2015

wherein it is held that, *When a boy and a minor girl are in love and chose to live together without the parent's consent, at the stage of bail, prima facie, the Court has to consider the circumstances.*

14. On the backdrop of the factual position applying observation of Hon'ble Bombay High Court, it is apparent that the applicant has not used force in commission of this offence of sexual assault. Investigation of this crime is over. Then in that eventuality, there is no propriety to keep him behind bar for an unending period. The grounds are justified to extend him on 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 applicant is allowed.
2.	The applicant/accused be released on bail on furnishing P.R. and S.B. of Rs.15,000/- (Rs. Fifteen Thousand) with one surety in the like amount on the following terms and conditions ;

i.	The applicant/accused shall assist to Investigating Officer whenever called under written intimation.
ii.	The applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the accusations against him so as to dissuade them from disclosing such facts to the Court or to any police officer.
iii.	The applicant/accused shall not tamper prosecution evidence in any manner.
3.	Inform to concerned Police Station accordingly.
	Dictated and pronounced in Open Court.

Place : Panvel.

Date : 03.10.2022

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

Arguments heard on	15 th Day of September, 2022
Judgment/Order delivered on	03 rd Day of October, 2022
Dictated on	03 rd Day of October, 2022
Transcribed on	03 rd Day of October, 2022
Checked and signed on	03 rd 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	:	03.10.2022
Judgment/Order signed on	:	03.10.2022
Presiding Officer	:	K.G. Paldewar
Judgment/Order uploaded on	:	03.10.2022