

CNR No. MHRT130000632022**Special Case No.03/2022****The State****Prosecution****Vs.****Omkar Ramashray Yadav****Accused****Order Below Exh.9***(Dictated and delivered in open Court on 10.04.2023)*

1. By this application filed under Section 439 of the Code of Criminal Procedure, the accused Omkar Ramashray Yadav has prayed for releasing him on bail in Crime No. 72/2022 of Alore Shirgaon police station for the offence punishable under Section 376(2)(f)(n), 376(3) of the Indian Penal Code and Section 4, 6, 8 and 10 of the Protection of Children from Sexual Offences Act.

2. In short, it is alleged by the prosecution that victim is aged 13 years and 10 months. She is studying in standard 8th. Accused is serving as Taykando teacher in her school. Victim came in contact with the accused due to said class. It is alleged that between June 2021 to July 2021, the accused took the victim for tracking behind Suryavanshi Shankar Mandir, Shirgaon and committed penetrative sexual assault on her. Due to said incident the victim became pregnant. Complaint came to be lodged by the mother of the victim on 27.12.2021 and accordingly, this crime came to be registered against the accused for aforesaid offences and the accused came to be arrested and is in jail since 11.01.2022.

3. Learned advocate Shri. S. D. Tawade for the accused submitted that if the allegation in the complaint is perused as well as the Medical Certificate then it will show that there is no external injury to the victim and there is possibility of consensual relation and love affair between the victim and the accused and so, there is no prima-facie case against the accused. He further submitted that the investigation of this case has completed and charge-sheet has been filed but trial has not began and so, no purpose would be served in keeping the accused behind bar. He further submitted that the accused is Taykando Champion and his future is at stage. He is of young age and has no criminal antecedent. He is also permanent resident of Chiplun and so there is no question of absconding. On these grounds he prayed that the accused be granted bail.

4. On the other hand, learned A.P.P. Shri. P. R. Salvi for the State submitted that the victim is merely of 13 years and so, there is no question of love affair between her and the accused. Pointing the DNA report and the charge-sheet he submitted that there is prima-facie case against the accused. He further submitted that although charge-sheet has been filed but he is ready to expedite the trial and therefore, there is no question of granting bail to the accused. He further submitted that there is also possibility of absconding of accused and as such prayed for rejection of the application.

5. Perused the application and say Exh. 10 filed by prosecution and say Exh. 11 filed by the informant and the submission advanced by both sides. Perused the documents placed on record vide Exh. 15. Perused the charge-sheet. It appears from the complaint that the accused being teacher of the victim had taken advantage of his position and committed penetrative sexual assault on the victim and made her pregnant. DNA report placed on record is positive. The age of victim is merely 13 years 10 months. Looking to the age of victim the theory of accused that there was love affair between them can not be accepted. Identical facts arose before the Hon'ble Supreme Court in th case of *X (Minor) Vs. State of Jharkhand and another, (2022 LiveLaw (SC) 194)*, relied upon by Ld. APP for the State. Rejecting the prayer of bail application of second respondent, it is held that - "Once, prima-facie, it appears from the material before the Court that the appellant was barely 13 years of age on the date when the alleged offence took place, both the grounds namely that "there was a love affair" between the appellant and the second respondent as well as the alleged refusal to marry, are circumstances which will have no bearing on the grant of bail". Applying the aforesaid ratio to the facts of present case, the theory of accused regarding consensual relation needs to be rejected.

6. No doubt charge-sheet has been filed but this fact alone is no ground to grant bail to the accused. Charge has already been framed and the matter is fixed for hearing. Ld.

APP for the State has filed pursis vide Exh. 17 that he is ready to conduct the matter day to day basis and expedite the trial. Therefore, the said objection of defence regarding delay in trial also does not survives.

7. Much stress is given by Ld. advocate for accused on educational and physical qualification of accused. I have perused the documents filed vide list Exh. 15. Certainly, accused is Taykando Champion and may be required to attend various championships. But looking to the nature of this offence it is not desirable to release the accused on bail. On the contrary, under the garb of attending championship, the apprehension of prosecution regarding absconding of accused can not be ruled out completely.

8. During the course of argument Ld. advocate for accused relied on the case of ***Amar @ Rounie Vs. State of Himachal Pradesh, (2022 STPL 9458 HP)***. It was a case of consensual relation. The accused was of young age and there was neither possibility of fleeing from justice nor the accused was in a position to tamper the prosecution witnesses. Under such set of facts, the Hon'ble Himachal Pradesh High Court granted bail to the accused therein.

9. Reliance is further placed on the case of ***Sunil Mahadev Patil Vs. State of Maharashtra, (2016 STPL 1945 Bombay)***. It was also a case of love affair between the minor

victim and the accused therein and they eloped together and went to the temple and performed marriage and started residing together. Under such set of facts, the Hon'ble Bombay High Court granted bail to the accused therein.

10. Reliance is further placed by Ld. advocate for accused on the case of *Manoj Kumar Vs. State of Himachal Pradesh, (2020 STPL 5619 HP)*. It was also a case wherein the accused was neither in position to flee away from justice nor in a position to tamper with the prosecution evidence. Under such set of facts, the Hon'ble Himachal Pradesh High Court granted bail to the accused therein.

11. Nobody can dispute the aforesaid proposition of law. However, in the present case there is possibility of accused absconding as well as there is possibility of tampering with the prosecution witnesses. There is no love affair between the victim and the accused and there appears no consensual relation between them. Therefore, the facts of the present case is different from the aforesaid rulings cited supra. With due respect the rulings cited supra are not applicable to the present case.

12. For the aforesaid reasons, in my opinion, the accused has failed to make out any case for releasing him on bail. Therefore, this application deserves to be rejected. Resultantly, the following order :-

ORDER

1. Application Exh. 9 is rejected with costs.
2. Ld. APP for the State is directed to expedite the trial.

Date :- 10.04.2023**(N.S.Momin)
Judge, Special Court, Chiplun**

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Case Number		Special Case No.03/2022 Order below Exh. 9
Name of Stenographer	:-	Sou. P. S. Lad
Name of Court	:-	Judge, Special Court, Chiplun
Date of Decision	:-	10.04.2023
Order signed by the P.O. on	:-	10.04.2023
Order uploaded on	:-	11.04.2023