

ORDER BELOW EXH.1

1] This is an application for bail filed by the applicant u/s. 439 of Code of Criminal Procedure in connection with CR No.119/2023 registered with Khadak police station for the offences punishable under Sections 363, 368, 376(2)(n)(f)(l) of the Indian Penal Code and under Sections 4, 5(n), 6, 9(n), 10, 11(4), 12 of the Protection of Children from Sexual Offences Act. [Hereinafter the Indian Penal Code referred to as “IPC” and the Protection of Children from Sexual Offences Act referred to as “POCSO Act” for the sake of brevity.]

2] The Investigating Officer has filed say and strongly opposed this bail application. The informant has filed say and resisted this application.

3] Heard Ld. Advocate for the applicant and Spl.P.P. for the State. Perused application, say filed by the prosecution and police papers. Perused documents tendered by the applicant i.e. sonography report of the wife of the applicant, photographs and conversation on telephone between the victim's mother and applicant's mother along with certificate under Section 65-B of the Indian Evidence Act.

4] It is argued by Ld. Advocate for the applicant that till the medical examination of the victim, there was no name of the present applicant. There was affair of the victim and one Shashikant Bhonde. The applicant came to know about love affair of the victim and Shashikant Bhonde and he scolded to the victim. Even the father of the victim beat her. FIR was lodged against Shashikant Bhonde. He

has further argued that on 11.08.2022, status of the photograph of the applicant and the victim had been kept on Rakshabandha. Shashikant Bhonde is absconded accused. The applicant has been falsely implicate din this case and there is telephonic talk between the mother of the victim and the mother of the accused who are sisters. The mother of the victim made demand of Rs.5 lakhs to release the applicant on bail. The conduct of the victim's mother discloses from telephonic call. The applicant is married and the victim had attended the marriage. The wife of the applicant is pregnant. He has drawn my attention towards the photographs and telephonic conversation tendered along with 65-B Certificate under the Indian Evidence Act. The victim is daughter of maternal aunt of the applicant. Hence, prayed for allowing the application.

5] Ld. Spl.P.P. has submitted that the applicant is married and he threatened to defame the victim and repeatedly committed the offence. The victim was avoiding to go to aunt's house. There is specific explanation why the victim did not disclose the incident earlier. There is prima facie material against the present applicant. The investigation has not completed. Hence, prayed for rejection of the application.

6] It appears that the victim is 16 years and 9 months old and daughter of the first informant. The mother of the victim has lodged a report against unknown under Section 363 of the I.P.C. on 11.04.2023. On 17.04.2023 the victim appeared in the police station and on the same date, she was sent for her medical examination. The

victim was having love affair with Shashikant Bhonde. The victim's father found messages of the victim and the accused Shashikant. Then the victim's father used to consume liquor and beat the victim. The victim eloped with accused Shashikant for 7 days and stayed in Pimpri. Then police caught hold the victim and brought her to Sassoon Hospital. After examining the victim, the doctor has given opinion that there is evidence of vaginal penetration with no evidence of fresh physical or fresh genital injuries. Thus, it seems that till the medical examination, the victim did not state the name of the present applicant.

7] The statement of the victim was recorded on 13.05.2023. It discloses that the mother of the applicant is her maternal aunt and as she has no real brother, she used to tie Rakhi to the present applicant. The victim has further disclosed that in the month of April-May-2019, she had been gone to stay in the house of her maternal aunt at Kothrud during the vacation. Her mother used to collect scrap and for that purpose used to go out of the house at 6.00 a.m. and was returning at 2.00 p.m. At that time, the applicant who is son of maternal aunt of the victim, used to remain present in the house and he had put his hand 2 to 3 times on the person of the victim when they slept. Thereafter, the applicant committed sexual assault and penetrative sexual assault upon the victim by giving her threat to defame in the relatives and to kill her. Therefore, the victim did not disclose the incident to anyone. Thereafter, multiple times, the applicant had established non consensual sexual intercourse with the victim by giving her threat, when her mother used to go for the work.

8] One day suddenly the mother of the victim came to the house of the applicant and at that time, the applicant by bolting the door from inside was trying to establish forcible physical relations with the victim. He gave threats to the victim to defame her in the relatives and directed her to keep quiet. Therefore, the victim got scared. The mother of the victim asked what happened to her but she did not tell anything due to threats given by the applicant and she told her mother to take her back. Thereafter, she went to her house along with the mother. Thereafter, she avoided to go to the house of her maternal aunt.

9] The victim further disclosed that in December-2020, she got acquainted with Shashikant Bhonde @ Chikya, residing in their vicinity and he proposed her for marriage. The victim disclosed the act committed by the present applicant and threats given by him to Shashikant. Therefore, Shashikant got angry. Thereafter, again Shashikant proposed her for marriage and the victim gave consent to marry to him after attaining majority. She used to talk to Shashikant and her mother and sister came to know about the same and then broken the mobile phone also and gave understanding to her. Thereafter, Shashikant gave her mobile and they were talking on phone. On 27.01.2023, the applicant came to meet her and they went to the maternal aunt of Shashikant at Tadiwala Road, near Police Chowky. At that time, Shashikant established non consensual sexual intercourse with her and thereafter, he dropped the victim at her house.

10] The parents of the victim came to know about love affair of Shashikant and the victim. They were harassing the victim and they had taken mobile phone from the victim. Therefore, due to anger on 10.04.2023, she left the house without informing anyone and gave phone call to Shashikant by taking phone of one autorickshaw person. Shashikant called the victim to Pune Railway Station and they met there and he took the victim at the house of his mother. The mother of Shashikant instructed Shashikant to drop the victim at her house. Shashikant dropped the victim to her house and they roamed full day on 11.04.2023 and stayed in one house in the slum area till 17.04.2023. They did not have physical relations. On 17.04.2023 Shashikant received phone call regarding lodging a report in the police station. Shashikant sent the victim by autorickshaw to the police station to appear before the police and accordingly, she has given statement before the police.

11] Ld. Advocate for the applicant has placed his reliance in ***Sandeep Kumar Mishra Vs. State of U.P. in Criminal Misc. Bail Application no. 32824/2020.***

12] There is no dispute that the applicant and the victim are maternal brother and sister. Phone call recording prima facie is not useful to the applicant to disbelieve the narration of the victim regarding commission of penetrative sexual assault upon the victim by him multiple times. The investigation is in progress and yet not completed. Considering the nature of the allegations, it is not just and proper to release the applicant on bail. Therefore, application is to be

rejected. With this, I proceed to pass the following order:

ORDER

- 1] The application is rejected.
- 2] Bail application stands disposed of accordingly.

Pune.
Date – 05.07.2023.

(S.P. Ponkshe)
Addl. Sessions Judge, Pune.

“ I affirm that the contents of the P.D.F. File Judgment are same word for word as per original judgment.

Name of Steno	- Sau.S.V.Thakar (Steno G-1)
Court Name	- Smt. S. P. Ponkshe, Addl. Sessions Judge, Pune.
Date of Order	- 05.07.2023
Order dictated on	- 05.07.2023
Order transcribed on	- 05.07.2023
Order signed by P.O.	- 06.07.2023
Uploaded on	- 06.07.2023