

ORDER BELOW Exh. 5 IN SPL.CASE NO.375/2024
(State of Maharashtra Vs.Dhairyasheel S. Swami)
(CNR No.MHSN0170006452024)

1. Perused the application, say of IO Exh.9 and say of the informant Exh.10, documents and citations relied by both sides. Heard Ld.Counsel Shri M.S. Shanbag, Ld.APP Shri A.N.Kulkarni for the State and Ld. Counsel Smt.S.M.Sule on the point of regular bail to accused No.1 namely; Dhairyasheel Siddeshwar Swami involved in crime No.158/2024 under 376, 376(2)(n) of the Indian Penal Code and section 4,5(l) and 6 of Protection of Children from Sexual Offences Act, 2012 registered at Vita Police Station.

2. It is the case of prosecution that the informant is mother of the victim. She along with her husband, son and the victim is residing at village Valuj, Tal. Khanapur, Dist. Sangli. The victim is a girl of 17 years and 6 months age. She is in 12th Std in a school at Vita. On 21.03.2024, she had stomach pain and she was taken to Government hospital, Sangli by the informant. The Medical Officer examined her and stated that she was carrying pregnancy of 5 months. When the informant asked the victim about her pregnancy, the victim did not tell anything to her. Police attached to Vita Police Station had also visited the hospital and inquired the victim about her pregnancy, but she did not give any response. The victim was discharged from the government hospital, Sangli. Then, the informant again inquired the victim by taking her in faith. Then, the victim

told her that she got acquainted with the applicant (accused No.1) while travelling by bus and developed friendship with him. She further told her that their friendship was converted into love relations. She further told her that the applicant had taken her to a hotel at Vita and established forcible physical relations with her and at that time, the applicant had stated that he loved her very much and he would marry her. The applicant again took the victim to the hotel in Vita in Nov., 2023 and established physical relations by giving promise of marriage with her. Therefore, the informant lodged report at Vita Police Station with above recitals.

3. The applicant has sought bail on the grounds that he is innocent and he is falsely implicated in this offence due to grudge and with intent to settle the dispute as per own accord of the informant. FIR is afterthought. The victim left her parental house on her own accord. The victim was on the verge of majority having knowledge of good and bad things in the society. Custody of the applicant is not required for the purpose of further investigation. The investigation is over and charge-sheet is filed. The victim and the applicant are residing in two different villages and there is no possibility of tampering with the evidence or threatening witnesses. Nothing is transpired or recovered to connect the applicant with the present crime. The victim and the applicant had friendship relations and they were in love with each other and the victim herself surrendered to desire of the applicant for physical relations as per contents in

the FIR. The victim did not complain to anyone regarding alleged offence till the date of lodging of FIR. She had alleged relations with the applicant since October, November, 2023. When pregnancy of the victim was discovered by the family members, report of rape came to be lodged to harass the applicant. Name of the victim girl is not mentioned in relevant register of the lodge at Vita. Letter given to Medical Officer by the victim girl reveals that the victim was in love relations with the applicant and she was not ready for abortion. The victim did not inform the informant and the police about her pregnancy even after inquiry with her. She has narrated name of five star lodge in police statement recorded on 11.04.2024. Different name is mentioned in the FIR. Prosecution case is based on concocted and fabricated report lodged with delay. Delay in lodging report is not satisfactorily explained. The applicant is coming from respectable family and he has no criminal antecedent. Physical custody of the applicant is not required at all. The applicant will not hamper or tamper with prosecution evidence. He prayed for bail.

4. Ld. Counsel Shri M.S. Shanbag for the applicant reiterated above grounds of bail by referring relevant documents in the charge-sheet in the course of his argument. He further relied upon paras 4 and 5 in the case of **Imran Iqbal Shaikh Vs. State of Maharashtra (Bail Appln.No.997 of 2022 decided on 26.04.2023)** for highlighting element of consensual relationship and he has given stress upon the aspect that minors

in romantic or consensual relationship should not be branded as criminals. He also relied upon observations in the case of Subhash Chandra Vs. State of U.P (Cri.Misc.Bail Appln.No.45186 of 2020 decided on 06.01.2021) and Faizan Wahid Baig Vs. State of Maharashtra (Bail Appln.No.3372 of 2021 decided on 15.11.2022) for stating that the victim (therein) was having age of understanding and she continued to remain silent and disclosed the incident only when an objection was taken for her establishing contact with the applicant. He further referred paras 2 and 5 in the case of Dinesh Yadav Vs. State of Madhya Pradesh (Misc.Cri.Case No.46987 of 2023 decided on 18.10.2023) in which the victim (therein) got pregnant and her pregnancy was discovered by the family members and then, the report of rape was lodged against the applicant therein. Hon'ble Madhya Pradesh High Court had granted bail to the applicant therein by considering delay in lodging FIR and younger age of the applicant therein. The last citation relied by him is in the case of Keshava Vs. State of Karnataka (in Cri.Petition No.101252/2021 decided on 19.07.2021) in which again aspect of age of understanding of the victim was considered. It was stated that biological father of the child born to the victim girl has to be ascertained only after receipt of DNA report. Bail was granted to the applicant therein by Hon'ble Karnataka High Court. He prayed for bail to the applicant.

5. Ld.APP Shri A.N. Kulkarni fo the State opposed the

bail application. He submitted that the victim was minor at the time of commission of the offence and she had friendship and love relations with the applicant. The applicant took the victim to the hotel and established forcible intercourse. He also read out statement of the victim and submitted that there is element of inducement in the present crime because the applicant had promised to marry the victim for making her to have physical relations with him. All citations relied by the applicant are not applicable to the facts of the present case. The victim did not state anything to mother. Considering the aspect of pregnancy, she might have not disclosed details to her mother out of fear. Delay in lodging FIR is not relevant factor. Statement of the victim under section 164 of Cr.P.C. is recorded. The applicant had shown the spot of hotel to the investigating officer as per panchanama under section 27 of the Evidence Act. Copy of relevant register of lodge is available. The applicant had shown the person accompanying him as a friend at the first occasion and his family on the second occasion on visit to the said lodge. He clarified in the course of his argument that the victim girl has given birth to a female child. As the applicant instigated the victim to have the physical relations and there are chances of tampering with prosecution witnesses, he prayed for rejection of the bail application.

6. Ld. Counsel Smt. S.M. Sule for the victim stated that the victim and her mother are only residing together. Father and brother of the victim are residing in two different towns/

villages. Time was required to the victim to get mentally stable. When the informant came to know about pregnancy of the victim, she developed health issue of high blood pressure. Accused No.2 is absconding. Delay in lodging report is not relevant. The applicant may try to destroy prosecution evidence. Health condition of the victim and newly born baby is critical. She prayed for rejection of the bail application.

7. Considering rival submissions and material on record, it appears that the victim was having age of 17 years and 6 months on the date of lodging FIR. She had crossed the age of 17 years in Oct., 2023. It means that she was mature enough to understand consequences of her act on the date of commission of the offence. She has admitted in her police statement as well as statement under section 164 of Cr.P.C. that she was having love relations with the applicant. It is pertinent to note that the victim did not disclose particulars of her pregnancy to her mother till she was having stomach pain. The victim avoided to give particulars of her physical relations with the applicant to the informant as well as to the police for long. In short, the victim was consenting party to the physical relations with the applicant. Mother of the victim has lodged report. Furthermore, the applicant continued to visit the same hotel/lodge with the applicant on the second occasion after having physical relations with the applicant on the first visit to the said lodge. It means that the applicant was fully aware and conscious of the acts of the applicant committed during first

visit to the lodge and even then, she continued to accompany him to the said lodge on the second occasion. If she had felt any fishy or against her desire after first visit to the lodge with the applicant, she would not have surrendered to the desire of the applicant on the second occasion by visiting the same place. Considering all attending circumstances including age of the victim, contents in her statements, delay in lodging FIR and the aspect of consensual relations between the victim and the applicant, the applicant is entitled to be released on bail. Prosecution has completed investigation and filed charge-sheet in the Court. Physical custody of the applicant is not required. The applicant is resident within jurisdiction of this Court and his presence can be secured for trial purpose. Hence, I pass following order :-

ORDER

1. Bail application Exh.5 is allowed.
2. Accused No.1 Dhairyasheel Siddheshwar Swami in connection with crime No.158/2024 under 376, 376(2)(n) of the Indian Penal Code and section 4,5(1) and 6 of Protection of Children from Sexual Offences Act, 2012 registered at Vita Police Station, be released on executing PR bond of Rs.50,000/- with one or more solvent sureties in the sum aggregating to Rs.50,000/- on following conditions:-
 - (a) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the

evidence.

- (b) He shall furnish his detailed address, mobile/contact number, address proof, identity proof at the time of furnishing bail.
 - (c) In case of change of his residence or mobile/contact number, they shall inform it to the court and the investigating officer.
 - (d) He shall attend the court regularly.
3. A soft copy of the bail order shall be sent forthwith by e-mail to the applicants through the Jail Superintendent of the concerned jail.
 4. Bail Application Exh.5 in Spl. Case No.375/2024 is disposed of accordingly.

Vita
dt.12.07.2024

(R.R.Bhagwat)
Additional Sessions Judge,Vita.

CERTIFICATE

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

Name of Stenographer	: S.V.Agnihotri (Steno Grade-I)
Court	: DJ-1 & Addl. Sessions Judge,Vita
Date of order	: 12.07.2024
Signed by Presiding officer on	: 12.07.2024
Uploaded on	: 12.07.2024