

MHTH010004992024

**Bail in Spl(P) Case No. 36/2024**  
**CNR No. MHTH01- 000499-2024**

Nitin Gaurishankar Saxena                      ...Applicant  
V/s.

State of Maharashtra  
( Through Kasarwadavali Police Station )  
C.R.No.393/2023                                      ...Prosecution

**ORDER BELOW EXH. 2**

( Delivered on this 7<sup>th</sup> day of May, 2024 )

1]            This is an application filed for bail u/s. 439 of Cr.P.C. in C.R.No.393/2023 registered with police Station Kasarwadavali for the offence punishable under Sec.376, 377, 354 of Indian Penal Code, Section 4, 5(f), 6, 8, 12 of The Protection of Children from Sexual Offences Act, 2012 (POCSO).

2]            The prosecution's case in short, is as under :-  
Applicant is a teacher, who teach Mathematics subject in tuition classes run by him in partnership with Suraj. Victim girl aged 14 years used to go tuition classes She has affair with one juvenile in conflict with law. Allegations against the applicant are that some photographs of victim were in the mobile of juvenile in

conflict with law. Under the threat applicant compelled juvenile in conflict with law to send those photographs to his mobile phone and started harassing the victim girl. The allegations against the applicant in FIR are under the threat of disclosing those photographs to her parents, applicant stopped the victim late night in the tuition class, he forcibly hugged her, kissed her, pressed her breast, took his pant and underwear down and gave his penis into her mouth for doing blow job.

Further, it is also alleged that he inserted his finger and penis in her private part and did forcible penetrative sexual assault on her.

Further it is alleged that the applicant proposed another girl in the tuition class, aged 16 years on Instagram. She refused it but he repeatedly proposed her and on the day of Guru Pournima, he tried to hug her with sexual intent and outraged her modesty.

On the basis of above allegations, Kasarwadavali police registered the offence punishable under Sec. 376, 377, 354 of IPC and S. 4, 5(f), 6,8,12 of The POCSO Act. Applicant is arrested and now he is in MCR.

3] Applicant has prayed for grant of bail on the ground of innocence, false implication. According to him, he and one Suraj Yadav were running S.K.Tutors a venture in the partnership. They are earning substantive amount. However, a rift developed between them. Suraj Yadav

wanted to grab the profit and therefore, in conspiracy with the complainant and Victim, he hatched to implicate the applicant. According to applicant, he warned the victim to refrain her from immoral acts, but she continued her relations with Arnav, therefore, applicant asked the victim to call her parents, that time, she implicated him in a serious crime. There is delay in lodging FIR. Medical evidence is not supporting. He submitted that he is ready to abide the terms and conditions of the court and prayed for grant of bail application.

4] The prosecution by filing say Exh.4 has strongly opposed the application on the ground that the allegations are serious in nature. Blood samples and clothes are seized and sent to FSL. Reports are yet awaiting. The applicant may pressurize or threaten the victim and witnesses if he is released on bail. Hence, prayed for its rejection.

5] Both the victims have filed say and strongly opposed for grant of bail to the applicant on the ground that there is danger to their life and he may harass other girls also if released on bail. Hence, prayed to reject the application.

6] Heard Ld. Advocate for applicant Shri. G.B.Chavan and Ld. A.P.P. Ms. Mhatre. And Ld. Adv. Salve for the informant. I have perused the record and

considered the submissions made by the advocates for respective parties.

7] Ld. Advocate for applicant has placed reliance on the observations in the following case laws:

- i) Paresh @ Kamlesh Prakash Dhanvatkar V/s. State of Maharashtra- 2018 ALL MR(Cri) 4007**
- ii) Dharmendra S/o. Keshav Nagdevte V/s. State of Maharashtra 2018 ALL MR (Cri) 3703**
- iii) Raju Sukhdev Dabhade V/s. State of Maharashtra 2018 ALL MR (Cri) 4841**
- iv) Amit Kumar V/s. State of Himachal Pradesh 2018 All MR (Cri) Journal 109**

8] Ld. Advocate for informant has placed on record letter dtd.26.03.2024 and 03.04.2024 given to Sr. P.I. Kasarwadavali Police Station, Thane in respect of sexual assault and mental harassment of victim, aged 16 years by accused Nitin, Letterhead of Sai Prasad Clinic in respect of treatment given to victim, copy of railway ticket from Jabalpur to Kalyan.

9] Ld. Advocate for informant has also placed reliance on following case laws:

- i) Rajendra Mahadevsa Tongle V/s State of**

**Maharashtra, 2018 ALL MR(Cri) 4859 -Bombay High Court in Cri.Application No. 78 of 2018 dtd.30.01.2018**

- ii) Harpal Singh and anr. V/s. State of Himachal Pradesh, AIR 1981 SC 361 dtd. 14.11.1980**
- iii) State of Goa and anr. V/s. State of Goa and anr.- 2023 ALL MR (Cri) 2301**
- iv) Mr. Ismail Shaikh @ Kabbu V/s. State of Goa 2020(2) AIR Bom.R.(Cri) 184 ( Bombay High Court )**

10] From the above following points arise for my determination and I have recorded my findings thereon for the reasons stated below :

Sr. No.	POINT	FINDINGS
1]	Whether applicant has made out prima facie case for releasing him on bail?	No.
2]	What order?	Application is rejected.

### **REASONS**

11] It appears from the record that admittedly applicant is a tuition teacher where victim(M) used to go. He was teaching Mathematics subject. Under the threat that he will disclose her sexual relations with Juvenile in conflict with law to her parents, he has sexually harassed

and did penetrative sexual assault on the victim girl at the age of 14 years. Not only this, he has inserted his penis in the mouth of victim. Considering the act done by the applicant with the victim being a teacher, it is shameful. The applicant also sexually assaulted the another victim (S). The victim (M) disclosed about the incident to her mother by making a phone call. Thereafter, the parents of victim confronted about it with Suraj Yadav Sir. Then, people gathered on the spot and assaulted the applicant . Thereafter, present complaint was registered. Both the victims in their statement recorded under Sec. 161 and 164 categorically stated the act did by the applicant with them. Ld.Advocate Shri. Chavan submitted that complaint was lodged after though and it was registered on the dispute of partnership between applicant and Suraj Yadav. No doubt, there is a delay in lodging the report. However, that can be decided at the time of trial. So far as the partnership is concerned, to my mind, dispute is in between applicant and Suraj. Why the parents of victim would involve both the victims in such a type of heinous act and defame them in the society. Therefore, the argument has no force.

12] Victim (M) and (S) by filing say in writing has strongly opposed for grant of bail. It is to be noted that the parliament has enacted this Act for protection of the children from sexual offences Act. The purpose of Act is

to save the minors from sexual exploitation.

13] The applicant is a tuition teacher. Being a teacher, it was his duty to teach the victim and other students good and bad things and to protect them from the evils in the society. In stead of doing so, the applicant did forcible penetrative sexual assault on her. He became predator. Due to this, the mental condition of victim, aged 14 years is deteriorated. In Medical examination report it is mentioned that there are no injuries on her genital part but the hymen is absent. The doctor has opined that on clinical examination sexual assault can't be ruled out. Considering the above facts and considering that the applicant is a tuition teacher, though charge-sheet is filed, if he is released on bail, the possibility of pressurizing and threatening the victim and witnesses could not be ruled out. Also, he will again involve in similar type of offence with another minor girls coming to their tuition classes.

14] I have gone through the observations in the case laws cited supra. However, the case in hand and allegations against applicant are totally different. In such situation, in my view, it is not a fit case to release the applicant on bail. Hence, the application deserves to be rejected and I proceed to pass the following order:

**ORDER**

Application stands rejected.

Thane  
Date - 08.05.2024

(D.S.Deshmukh)  
Special Judge Under POCSO Act,  
Thane.