

MHTH010032262023

**Bail in Spl(P) Case No.455/2023**
CNR No. MHTH01- 003226-2023Abhishek Madan Medhwaj .. Applicant/
Accused

V/s.

State of Maharashtra
(Through Kasarwadavali Police Station,
C.R.No.56/2023) .. Prosecution**ORDER BELOW EXH.5**(Delivered on this 19th day of July, 2023)

1] This is an application for bail u/s. 439 of Cr.P.C. in Cr.No.56/2023 registered with police Station Kasarwadavali for the offence punishable under Sec. 376D, 376(2)(n), 323, 506(2) of Indian Penal Code, Section 4, 5(g), 5(l), 6 of The Protection of Children from Sexual Offences Act, 2012 (POCSO) and Sec. 37(1)(A), 135 of Maharashtra Police Act.

2] The prosecution's case in short, is as under :-

It is alleged that on 10.02.2023, victims along with co-accused and her friends were chitchatting in a

garden. They have need of money. Therefore, they demanded hand loan of Rs. 20,000/- to co-accused Bunty Sitaprao. He agreed to pay money to them. On 15.02.2023, in between 10.30 a.m. to 10.00 p.m., accused Bunty @ Krutik Sitaprao and his brother Rutik Sitaprao, called the victims at Thane railway station under the pretext of giving money. Accordingly, they came to Thane railway station. Therefore, co-accused Bunty introduced another co-accused Rutik as his brother. He told them to go in the room of Rahul Gaikwad. Accordingly, all of them went to the room. However, room was locked. All are went in one garden at kokanipada.

3] It is alleged that there, co-accused Bunty asked both the victims about their Adhar Cards and told them to go the lodge and there they will chitchat peacefully. As Adhar Cards were not available, co-accused Bunty told to co-accused Rutik to make arrangement of room. Rutik said that Brahmand is the safest place for chitchatting. Accordingly, he brought the auto rickshaw. All of them went by rickshaw near Dosti Desire building at Bramhand.

4] It is alleged that both of them took the victims in thick bushes at a distance of 100 ft. They chitchat there for sometime. After some time, Rutik called the applicant at Bramhand and told him that he should keep watch and inform them if police arrived and paid him

some money.

5] It is further alleged that at about 7.00 p.m. Rutik demanded sexual favour to informant victim. When she refused for the same, he started assaulting her with fist and blows. He also dragged her at some distance. He removed her clothes forcibly, made her naked, did video shooting and committed forcible penetrative sexual on her. In the same way, Bunty @ Krutik also committed forcible penetrative sexual assault on another victim. Again both of them have one by one committed forcible sexual assault on both the victims. Then, accused Bunty and Rutik called the applicant. He came and committed forcible penetrative sexual assault on another victim. All have threatened the victims that if they lodged complaint with the police station, they will have to face the consequences. Accordingly, report came to be lodged. On the basis of said report FIR bearing No.I-56/2023 registered with police Station Kasarwadavali for the offence under Sec. 376D, 376(2)(n), 323, 506(2) of Indian Penal Code, Section 4, 5(g), 5(l), 6 of The Protection of Children from Sexual Offences Act, 2012 (POCSO) and Sec. 37(1)(A), 135 of Maharashtra Police Act is registered. Applicant is arrested. He is in custody. Applicant prayed for bail on the ground of innocence and false implication. According to him, since beginning, he was not accompanied with the victims and co-accused. He was called to keep watch on the police and for that

purpose co-accused Bunty has paid some money to him . According to him, he never committed sexual assault on the victims. He is a young boy at the age of 19 years. Investigation is completed. Charge-sheet has been filed. If he remains in jail, his life will be spoiled.

6] Ld. A.P.P. and investigating officer has strongly opposed the application by filing their say vide Exh.6. According to prosecution, applicant and co-accused have committed gang rape on both the victims taking disadvantage of their helplessness. Punishment for the offence of 376D is rigorous imprisonment for a term which shall not be less than 20 years but which may extended to life. Hence, prayed for its rejection. The informant victim has resisted the bail application.

7] Heard Ld. Advocate for applicant Shri. Dhaware and Ld. A.P.P. Smt. Hivarale. Perused the record. Also gone through the charge-sheet.

8] 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	No

releasing him on bail?

2] What order?

Application is
rejected

REASONS

9] The record indicates that the co-accused Bunty and Rutik have called the victim and her friend at Thane railway station under the pretext of giving money. Then, both of them took the victims in the thick bushes and committed gang rape on them. The record indicates that co-accused Bunty called his friend Abhishek i.e. applicant, gave him money and asked him to keep watch and inform them when police will arrive. Then, co-accused Bunty and Rutik have first demanded sexual favour when both the victims refused, accused Rutik assaulted one of the victim, dragged her by showing chopper and blade and committed penetrative sexual assault. He also did her naked video shooting in his mobile. Co-accused Bunty assaulted the another victim and committed penetrative sexual assault. After that they called the applicant on the spot and allowed him to commit penetrative sexual assault on another victim. All have given threat that if they report the incident to the police, then they will have to face the consequences.

10] The record indicates that at the time of medical examination of both the victim, doctor has found some

injuries on the person of the victim like abrasion, swelling, dislocation and tenderness. Their hymen are not intact. The above medical examination reveals that both the victim are subjected to sexual assault.

11] The allegations are serious in nature. There is a gang rap. Applicant and co-accused also involved in the said offence. Applicant and co-accused Bunty and Rutik taking disadvantage of the helplessness of the victim, have subjected them to penetrative sexual assault. Not only this, the co-accused has made naked video shooting of the victims. Considering all these aspect and the serious allegations, though the charge-sheet is filed, punishment for the offence of Sec.376D is rigorous imprisonment for a term which shall not less than 20 years and which may extend to life. Therefore, in my view, this is not a fit case to release the applicant on bail. Hence, the order:

ORDER

Application stands rejected.

Thane
Date - 19.07.2023

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

certificate

I affirm that the contents of this PDF file are word to word as per original Judgment/order.

Dictated on : 19.07.2023
Transcribed on : 19.07.2023
Checked & signed on : 19.07.2023

Date : 19.07.2023

Sd/-
(V.S.Shukre)
Stenographer (Gr.I)
Additional Sessions Court-3,
Thane