

Spl. POCSO Case No.455/2023

MHTH010032262023

**Hrutik @ Bhai Dattatray Sitaprao****Vs.****State of Maharashtra
(Through Kasarwadavli Police Station)****ORDER (BELOW EXH.15)**

This application for regular bail has been filed in Crime No.I-56/2023 registered at Police Station Kasarwadavli for the offences punishable under Sections 376D, 376(2)(a), 323 and 506 of the Indian Penal Code and under Sections 4, 5(a) and 6 of the Protection of Child from Sexual Offences Act (In short “POCSO Act”).

1] The Applicant/the Accused contended that he has been falsely implicated in the crime. There is delay of 14 to 15 hours in lodging the FIR. The victims were taken to hospital after 24 hours and were medically examined after 30 hours of the incident. The Reports of their medical examination do not support the Prosecution case. Both the victims spent 8 to 10 hours with the Applicant and the Accused No.3. The victims came to Thane to receive cash amount Rs.20,000/- demanded by them from the Accused No.3. They were knowing each other since few days. They

did not raise hue and cry while traveling with the Accused in rickshaw. The victims are matured and have capacity to understand the things and its consequences. The matter is at the stage of framing of charge and therefore, it would take considerable time for conclusion of trial. The Applicant is in jail from 18.12.2022. He is ready to abide by conditions, if released on bail. This is his first bail application and has not filed any other bail application before any court. Hence, the present application.

2] The learned APP opposed the application by filing Reply at Exh.17. It is contended that the alleged offences are of serious nature and punishable with imprisonment for life. The alleged offences are heinous as committed against child victims. During investigation, it was revealed that all the Accused have committed the alleged offences. There is sufficient evidence against them. They took undue advantage of helplessness of the victims and committed alleged crime. The weapons and mobile phone used in commission of offence are seized during investigation. The Reports of medical examination of the victims corroborates the Prosecution case. The Applicant is one of the prime Accused and has played active role in commission of the alleged offence. The charge is framed against the Accused on 01.06.2024 and trial is about to commence. If the Applicant is released on bail, he may threaten the victims and may commit more serious offence. He is a habitual offender. Therefore, it is prayed for rejection of the application.

3] Heard, the learned **Adv. S.K. Kamble** for the Applicant,

the victims in person and the learned **A.P.P. Shri. Dixit**. I also perused the documents on record. On 16/02/2023, the Informant/ the victim lodged the Report. She contended that her friends Chhaya and Nidhi introduced her with one Gaurav Misal who introduced her and the other victim with Tarun Tayde. The said Tarun Tayde introduced them with Bunty @ Krutik Sitaprao. On 10.02.2023, the Informant and the other victim, Gaurav Misal, Tarun Tayde, Rahul Gaikwad, Bunty @ Krutik and Prasad were sitting and chit chatting in the garden. The Informant and the other victim were in need of money and therefore, they demanded hand loan of Rs.20,000/- from Bunty @ Krutik. He told them that he would give them money within two days. After two days, they asked him about money and he agreed to pay money on 15.02.2023.

4] On 15.02.2023 at about 10.30 a.m., Bunty @ Krutik called the other Accused on phone and asked to come at Thane for receiving money. Therefore, the Informant and the other Accused reached at Thane Railway station at about 1.30 p.m. Bunty @ Krutik was accompanied by one boy. He told that the said boy is his brother Hrutik i.e. the Applicant. They went to the house of Rahul Gaikwad, but it was closed. Therefore, they went to a garden in Kokanipada. The Applicant went away in search of room. Bunty @ Krutik enquired about Adhar Card with the Informant and other Accused to go to a lodge. He also asked the Applicant on phone to make arrangement for a room. The Applicant told that Bramhand area would be a safe place for them. After some time, they went to

Dosti Desire building in Bramhand area. Bunty @ Kritik Sitaprao and the Applicant took the Informant and the other victim in dense bushes at about 100 ft. distance. The Applicant called his friend Abhishek Medvaj there and told him as, “पोलिस आले तर सांग”. He also gave him some money and asked to leave therefrom. There was dark at about 7.00 p.m. The Applicant asked for physical favour to the Informant, but she refused thereto. Thereupon, he started beating her up by kicks and fist blows and dragged her at some distance from the other victim and Bunty @ Krutik. He asked her to remove clothes, but she refused thereto. He again beat her up with kicks and fist blows and threatened to kill her by taking out chopper and blade with him. He forcibly removed all her clothes and prepared her naked video in mobile phone with him. Thereafter, he raped her. The Informant also saw that Bunty @ Krutik was raping the other victim. Thereafter, Bunty @ Krutik committed rape with the Informant and the Applicant with the other victim. After some times, the Applicant said as, “जास्त शहाणपणा दाखवीत होतीस काय, थांब तुझेवर अजून दोन मूल चढवतो” and called someone there on phone. Abhishek Medhwaj came there within 15 to 20 minutes and committed rape with the other victim. Bunty @ Krutik, the Applicant and Abhishek Medhwaj threatened the Informant and other victim of dire consequences if they approached the police. The Informant and the other victim came at Thane Railway Station alongwith the Applicant in rickshaw. The Applicant again threatened them. The Informant and other victim saw the police and narrated him the incident. On the basis of this information,

the Crime was registered.

5] The learned Advocate for the Applicant submitted that both the victims were in the age of understanding when the alleged offence was committed with them. The victims demanded amount Rs.20,000/- to Bunty @ Krutik whom they were knowing since one week before the incident. But they did not get amount from him. They went with the Applicant and Bunty @ Krutik. After the alleged incident, they came with the Applicant at Thane Railway Station. But the victims did not attempt to report the incident to anybody till they saw policeman. Their conduct should be taken into consideration. There is delay in lodging the Report and conducting medical examination of both the victims. The case of the Prosecution is doubtful. It would take long time for conclusion of trial. Therefore, the Applicant is entitled to bail. The learned Advocate has placed reliance on the following Judgments and Orders :

- 1) **Dnyaneshwar Trimbak Navghare Vs. The State of Maharashtra – Criminal Bail Application No.234/2020, decided on 13.07.2020;**
- 2) **Anirudha Radheshyam Yadav Vs. The State of Maharashtra – Criminal Bail Application No.2632/2019, decided on 09.01.2020;**
- 3) **Umrav Singh Sohan Singh & Anr Vs. The State of Madhya Pradesh & Anr – Misc.Criminal Case No.5303/2023, decided on 05.04.2023;**
- 4) **Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. - Criminal Appeal No.1834/2022, decided on 11.10.2022;**

- 5) **Prabhakar Tewari Vs. State of U.P. & Anr. - Criminal Appeal No.152/2020, decided on 24.01.2020;**
- 6) **Joy V.S. Vs. State of Kerala - Bail Application No.8741/2018, decided on 05.03.2019;**
- 7) **Mohd. Muslim @ Hussain Vs. State (NCT of Delhi) – Special Leave Petition (Cri.) No.915/2023, decided on 28.03.2023;**
- 8) **Balwinder Singh Vs. State of Punjab & Anr. - Petition for Special Leave to Appeal (Cri) No.8523/2024, decided on 09.09.2024;**
- 9) **Mahipal Vs. Rajesh Kumar @ Polia & Anr. - Criminal Appeal No.1843/2019, decided on 05.12.2019.**

6] It reveals from the FIR that Bunty @ Krutik called both the victims to give them amount Rs.20,000/- and therefore, the victims accompanied Bunty @ Krutik and the Applicant. Bunty @ Krutik was known to the victims. He enquired with the victims about their Adhar cards to go to a lodge. Thereafter, they went to Bramhand area. Bunty @ Krutik called his friend Abhishek Medhwaj and gave him money. He asked him to keep watch and to inform them if the police arrived. Thereafter, the Applicant asked for sexual favour to the Informant. On her refusal, he forcibly removed her clothes and prepared her naked video. He beat her up with kicks and fist blows and committed rape with her. At the same time, Bunty @ Krutik committed rape with other victim. Thereafter, Bunty @ Krutik committed rape with the Informant and the Applicant committed rape with the other victim. The other Accused Abhishek Medhwaj also committed rape with the other

victim. They all threatened the victims of dire consequences if they disclosed the incident to anyone. Both the victims are in the age of their discretion. But the Prosecution case does not reveal that either of the victims has love affair with Bunty @ Krutik and therefore, they accompanied him. The facts of the case show that it is the case of gang rape. At the time of medical examination of the victims, the concerned Doctor has found some injuries like abrasions, swelling, dislocation and tenderness on their person. Their hymen were not intact. Therefore, both the victims were prima facie subjected to sexual assault.

7] The Prosecution story shows seriousness of the alleged offence. Specific role is attributed to the Applicant and the other Accused in commission of the offence. The alleged offence is heinous as it is committed with minor victims. Though the charge-sheet has been filed, there appears possibility that the Applicant and the other Accused may threaten or pressurize the victims to affect the trial. The charge has been framed against all the Accused on 01.06.2024. I also considered Section 29 of the POCSO Act. No case is made out to release the Applicant on bail. Hence, I passed the following Order.

ORDER

This Application Exh.15 is hereby rejected.

Date:- 09.01.2025

(D. B. Bangde)
Additional Sessions Judge, Thane.