

ORDER BELOW EXH.9

(State Vs Shubham Panbude+1)

1] Perused application and say filed by P.P. for State. Notice issued to first informant i.e. victim. Perused reply filed by her. Heard Advocate for applicant, A.P.P. for State and victim.

2] This is first bail application filed under section 439 of Cr.P.C. by applicant in respect of his arrest in C.R.No.1156/2023 registered at Arvi Police Station for the offences punishable under sections 363, 366(A), 376(D), 376(2) (n), 323, 506 r/w. 34 of the Indian Penal Code, under sections 4, 6 of the Protection of Children from Sexual Offences Act, 2012, Sections 3(2)(v), 3(2) (va), 3(1)(w)(i), 3(i)(w)(ii) and Sections 75, 77 Juvenile Justice (Care and Protection of Children) Act, 2015. It is alleged that victim aged about 16 years lodged report stating that on 13.10.2023 she went to college but she was not filling well and at about 10.00 a.m. she was going to her house by bus by telling her teacher. She reached at bus stop and was going to house by walking. One white colour Scorpio vehicle stopped near her and one fat person wearing jeans pant and shirt got down from vehicle, he pressed her mouth by his hand and made her to sit at middle seat of vehicle. He threatened to kill her and her mother by knife, if she shouted. Near driver seat, person viz., Ashpak i.e. present applicant sat and victim was acquainted with him. Said unknown person took vehicle towards Dhanori Dam at secluded place. After vehicle was stopped, applicant ran away. Said unknown person pressed neck of victim, consumed her liquor forcibly, slapped her, gave kick and fist blows, removed her clothes forcibly and by wearing condom, said person forcibly committed sexual intercourse with victim. Victim was shouting but windows of vehicle were closed and nobody could listen her. Then applicant Ashpak came and asked said person to leave victim by taking his name. Victim learnt that name of said person was Shubham. Said person Shubham repeated the act in the vehicle and

victim became unconscious.

3] In supplementary statement dated 02.11.2023 victim made allegations against present applicant Ashpak that he was knowing that victim belongs to Gond community and by taking disadvantage of said fact, applicant Ashpak gave fist blows to her, threatened to kill her and took her in old dilapidated quarter where applicant Ashpak forcibly committed sexual intercourse with her. Thereafter, accused Shubham and applicant Ashpak again forcibly committed sexual intercourse with her one by one. In previous statement, she could not tell name of applicant Ashpak Shah.

4] According to applicant he is falsely implicated in this matter. He never committed such type of act and his name is not mentioned in FIR. Only statements of interested witnesses are recorded. Victim was examined on 14.10.2023 by Medical Officer but there were no injuries on her body parts or private part. Hence, there are doubtful circumstances. As per attendance register of college of victim, victim is continuously absent since 09.10.2023 till 13.10.2023. Therefore, victim narrated false story. There was dispute between applicant and family of victim. Supplementary statement of victim was recorded after delay and victim made false allegations against applicant. After completion of investigation, charge-sheet is filed. Personal custody of applicant is not required. Applicant is 20 years old and doing private job. He is resident of Taluka Arvi, Dist. Wardha. He has no criminal antecedent. He is ready to abide the conditions. Hence he prayed to release him on bail.

5] PP I.O. first informant i.e. victim objected this application on the ground that there are allegations of gang rape with victim by applicant and accused Shubham Panbude. Though charge-sheet is filed, there is possibility of repeating offence. Applicant resides at adjacent village of victim. Applicant will pressurize victim and witnesses. There is possibility of tampering prosecution

evidence. There is possibility of repeating act and of his absconding. So they prayed to reject the application.

6] Allegations against the applicant are serious. From statement and supplementary statement of victim role attributed to applicant can be gathered. It revealed that initially as per FIR, victim made allegations of forcible sexual intercourse with her by accused Shubham by taking her at secluded place in Scorpio. At relevant time applicant Ashpak sat in vehicle near driver seat and then got down from the vehicle. When victim shouted, applicant asked Shubham to leave her. In supplementary statement, victim stated that accused Shubham consumed her liquor, did forcible sexual intercourse with her. Thereafter, applicant Ashpak also gave fist blows to victim, threatened to kill her, took her in old dilapidated quarter where he committed forcible sexual intercourse with victim. Then accused Shubham and applicant again committed forcible sexual intercourse with victim one by one. Advocate of applicant submitted that in FIR there are no allegations of forcible sexual intercourse by applicant with victim. Medical evidence is not corroborative. Victim did not attend school since 09.10.2023 till 13.10.2023. Only due to previous quarrel, applicant is falsely involved.

7] In support of his contention Advocate of applicant relied on authorities cited in (1) **Suraj Paithankar Vs. State of Maharashtra in Bail Application No. 817 of 2020 dated 03.07.2020**, in which offence P.U.S. 376 of I.P.C., POCSO Act and Atrocity Act were leveled against applicant. After completion of investigation, charge-sheet was filed. In statement of victim under Section 164 of Cr.P.C. she disclosed that applicant abused her by mentioning her caste. Considering above reason, applicant was released on bail. (2) **Bhimrao Dhole Vs. State of Maharashtra in Bail Appln. No. 155 of 2020 dated 16.06.2020**, in which offences p/u/s. 376AB, 376 (2)(J) of I.P.C. Sec. 4 and 8 of POCSO Act were leveled alleging that accused sexually abused minor and

hearing impaired girl. There was absence of medical opinion to effect that sexual intercourse committed. No semen stains noticed on clothes of victim and accused, therefore, applicant was released on bail.

8] Ratios laid down in above cited ruling are noted and considered but fact of this case are different. Victim clearly made allegations of gang rape against accused Shubham and applicant Ashpak. Accused Shubham slapped her, gave kick and fist blows, consumed her liquor and then committed sexual intercourse forcibly with her in vehicle. Thereafter, applicant Ashpak came in vehicle and they took her in old quarter where by beating her, they both committed forcible sexual intercourse with her one by one. In medical paper she gave history of forcible sexual intercourse by accused Shubham. Hymen injury present and doctor opined that evidence of sexual intercourse/assault cannot be ruled out. In statement under Section 164 of Cr.PC. victim made similar allegations. Therefore, though charge-sheet is filed, there is possibility of tampering prosecution evidence. Charge is framed and there is possibility of giving threat and pressure to victim and witnesses by applicant. There is also possibility of repeating the act. Hence, considering gravity of offence, prima facie material, at this initial stage, it is not proper to release applicant on bail and application deserves to be rejected with following order.

Order

Application is rejected.

Date : 29.01.2024

(R.V. Adone)
Spl. Judge (POCSO Act), Wardha.