

IN THE COURT OF SESSIONS, YAVATMAL**Special Case No.25/2024****State Vs. Arjun Bhoyar****(CNR NO. : MHYA010006882024)****Order Below Exh.02*****(Passed on 5th July, 2024)***

This bail application is moved under section 439 of the Code Of Criminal Procedure by the accused Arjun @ Ranjit Ganesh Bhoyar in relation to FIR No.56/2024 registered at P.S. Yavatmal Rural for the offence punishable under sections 354A, 354D, 376(2) (n), 376(2)(j), 376(2)(f) and 376(2) of the Indian Penal Code, sections 6, 8, 10 and 12 of Protection of Children From Sexual Offences Act, and 67 & 67A of Information Technology Act.

2] The contention of the accused/applicant that he is a peace-loving law abiding person. He has responsibility of his entire family to shoulder being a sole bread-earner. He has no criminal antecedent. False report has been lodged by the victim against him who in her report has accepted of them to have been in a love-affair. The victim was desirous of solemnizing marriage with him however, her mother was against it since he is an illiterate. Hence, she has embroiled him in a false case by keeping the victim in for front. In reality no incident as alleged has occurred. Without any reason his liberty has been curtailed. He possesses movable, immovable property also is permanent resident of Talegaon (Bhari), Yavatmal. He has cooperated in investigation till date. No *prima-facie* case is made out against him. He is willing to abide term condition. Hence, application for bail.

3] Say of APP, I.O. and informant was called. APP vide his say(Exh.07) has opposed the bail application. Factual matrix of the case is elucidated. It is contended that the accused not only took personal pictures, videos of the victim but also uploaded them against her wish. Spot panchanama has been done relevant material has been seized. Medical examination has been done and charge-sheet filed. Examination supports repeated aggravated penetrative assault on the minor by the accused who is her cousin. There are chances of him manipulating her once released.

4] I.O. vide his say Exh.08 has opposed the bail application on the ground that once the accused is released on bail he will have no fear of law. After being enlarge he might pressurized witnesses. There also also chances of him absconding and not attending trial. The nature of offence is serious. Considering that the victim is minor there of possibility of reoccurrence of another offence.

5] Informant cum victim vide her say Exh.05 has not opposed the bail application provided adequate condition are imposed on the accused as to prevent reoccurrence of crime. It is submitted that since the accused is a relative there are chances that on his release he might harass her. It is contended that after being enlarged he might also be a danger to the life of her parents or might defame her.

6] Defence counsel argued that the applicant/accused is a 24 years old boy who is involved in labour work. Drawing the attention of this Court to FIR you posited that there being love affair has been admitted in it. He counteracted that there is delay in

lodging of FIR which make its pellucid that false allegation have been leveled against him. He combated that no pictures or videos had been uploaded by the applicant/accused to did not even know the details of Instagram account of victim. Inviting the attention of this Court to PCR documents he submitted that nothing had come to be seized from him. He clarified that applicant/accused and victim child reside in separate villages whereby question of there being danger of pressurize him was baseless. He explained that parents of boy and girl involved in the matter once sibling and there was in existence property dispute amongst them being propelled by which false report had come to be lodged. He reiterated that the charge-sheet had been filed. He added that the applicant/accused was willing to abide any condition subject to which enlargement is implored.

7] Refuting the defence argument APP proffered that the applicant/accused not only recorded objectionable pictures and videos of the victim against her wish but he also made viral by uploading them on her Instagram account. He submitted that question no.5 and 7 which were forwarded to the forensic laboratory Amravati have not been answered yet. He reiterated that if the accused is released on bail there is danger that he may upload any other personal data of the victim/child which he may possess with him. He contended that *prima-facie* evidence of guilt of accused was present. He stated that considering that the applicant/accused is a relative of the victim possibility of pressurizing was more. He harped that it would hamper trial. He prayed for rejection of application considering serious nature of the

matter.

8] *Prima facie* involvement, nature, gravity of charge, position and standing of the accused, also severity of punishment are some of the important factors to be taken into account while exercising discretion for bail. Nevertheless, these are not exhaustive. While exercising discretion in considering question of grant or refusal of bail, besides factors laid above the Court must also give regard to the principle of "Bail is a rule and jail in an exception". *Albeit* when it would apply is a question of fact since no inexorable formula can be applied for the same.

9] No doubt that the nature of offence is serious. However, along with the same the Court is also required to take into consideration factual matrix and concomitant background circumstances of any particular case. In this regard, it is pertinent to note that the defence has prayed for bail on the ground that the relationship was consensual. The prosecution has combated this argument on the ground that the victim was a minor who was deceived, manipulated whereby *prima-facie* case is made out. Both invited the attention of this Court to contents of FIR in that context. Nevertheless, at this nascent tier the merits of the case which can be deliberated upon only during trial cannot be gone into elaborately. What needs to be taken into account is whether the release as implored for by the accused will hamper or protract trial.

10] The prosecution opposed the release on the ground that the accused might tamper with evidence. However, if record of the case is scrutinized it is illume that statements of witnesses have

been recorded. Medical examination of the accused and victim has been done. Seizure, spot panchanamas are seen to have been conducted. Documents of identity, mobiles of victim and applicant/accused have also been gathered. CDR/SDR certificates have been gathered from Nodal Officer. Seized articles have been forwarded to forensic laboratory for analysis. Memory card along with certificate has been made part of record. Even the charge-sheet has been filed. Thus, it is perspicuous that investigation for which physical custody could be deemed to be requisite has been completed. The prosecution has not brought forth that any recovery or discovery at the instance of the accused is pending. The chances of the accused thus tampering with evidence are found to be sporadic.

11] The prosecution has further opposed the release apprehending pressurizing of victim and witnesses. However, informant cum victim herself has expressed no such apprehension of them being pressurized. In fact, she and her parents before Court submitted that they have no objection to release of accused as he is their relative. Further no any past criminal antecedent on part of the accused have been enunciated. Thus, mere apprehension cannot stampede the Court into complacent refusal from considering bail application.

12] It is no longer *res integra* that the object of bail is to secure the presence of the accused person at trial. The object is neither punitive nor preventive. The test to be applied is whether the presence can be secured at trial. The accused has submitted that he is willing to abide with conditions. There are elicited no

exceptional factors which manifest likelihood of him interfering, polluting, thwarting the process of trial so as to raise exception to the above given object. On the other hand, the accused is in custody since the date of his arrest on 05/02/2024. Apprehension of absconsion, evasion, repetition can be addressed by imposing conditions. The application thus deserves to be countenanced.

13] Before saying omega it is clarified that any observation made herein above are not to be construed to be reflection on the merits of the case and shall remain confined to disposal of this application alone. Hence, I ordain as follows.

ORDER

1. The application is allowed.
2. Accused **Arjun @ Ranjit Ganesh Bhoyar**, r/o Ward No.2, Talegaon (Bhari), Tq. & Distt. Yavatmal in relation to Spl. C. No.25/2024 FIR No.56/2024 registered at Police Station Yavatmal Rural for the offence punishable under sections 354A, 354D, 376(2)(n), 376(2)(j), 376(2)(f) and 376(2) of the Indian Penal Code, sections 6, 8, 10 and 12 of Protection of Children From Sexual Offences Act, and 67 & 67A of Information Technology Act be released on P.R. of Rs.75,000/- (Seventy Five Thousand Only) with one surety in the like amount, on following terms and conditions:

Conditions :-

- (i) The accused 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.
- (ii) He shall attend each and every date of trial, failing which it shall be a ground for cancellation of bail.

- (iii) The accused not to indulge in any illegal activities inclusive of uploading any data defaming victim or her family or in committing the offence of like nature.
- (iv) He shall produce verified copy of his Aadhar Card, contact details and other address proof.
- (v) His surety shall produce verified copy of his Aadhar Card, contact details, copy of Bank Pass-Book and other address proof.

Date : 05/07/2024

(S.R.Sharma)
Additional Sessions Judge,
Yavatmal