

IN THE COURT OF SESSIONS, YAVATMAL
Special Case No.74/2023
State Vs. Amol
(CNR NO. : MHYA010013002023)

Order Below Exh.4
(Passed on 2nd December, 2023)

This bail application is moved under section 439 of the Code Of Criminal Procedure by the accused Amol Wasudeo Dighade in Special Case No.74/2023 in relation to FIR No.225/23 registered at P.S. Babhulgaon for the offence punishable under sections 354-A, 354-D and 506 of the Indian Penal Code and sections 12 of Protection of Children From Sexual Offences Act (hereinafter referred to as the 'POCSO' Act for sake of brevity).

2] The contention of the accused is that he is alleged of having outraged modesty, making unwelcome overtures towards and threatening the victim- child. But there is considerable delay in lodging of FIR which goes to show that the case is false. He belongs to refuted background. He is having no criminal antecedent. He has roots in society and will not flee from justice. He is only bread earner of his family. The matter has not progressed and is at the stage of framing charge. He is having roots in community. He is willing to furnish solvent surety and comply conditions. Charge-sheet has been filed and investigation completed. Considering age and conduct of accused, bail is prayed for. Hence, application for relief laid *ante*.

3] Say of APP, I.O. and informant was called. APP vide his say(Exh.5) has opposed the bail application. The factual matrix of

the case is enunciated. It is submitted that the accused pressurized the victim- child that if she refused to marry him he would kill her. It is contended that the offence is serious. On release the accused might again pressurize the victim- child and witnesses. It is laid that both of them reside in same locality whereby there is possibility of repetition of crime. There is even danger to the life of victim- child. On release the accused might abscond. On these grounds rejection is prayed for.

4] I.O. vide his say (Exh.6) has resisted release of the accused on bail. It is contended that since the accused and victim-child reside in same village there is possibility of repetition of crime also danger to her life. It is laid that the victim- child goes for taking education on bicycle and on release the accused might threaten her life. On these grounds rejection is prayed for.

5] The informant vide her say (Exh.7) has resisted the bail. It is contended that on release the accused might pressurize her and witnesses. It is laid that there is danger to her life since the accused has earlier also threatened her with dire consequences. It is submitted that she is 14 years old and requires to go alone for school and even stays alone at home since parents go to work in field.

6] The defence counsel argued before Court that it is first bail application moved by the accused who was arrested on 12/4/23. He submitted that there is delay of 9 hours in filing of FIR. He contended that the accused is ready to abide all conditions. He added that he is involved in labour work and has parents also. He

prayed that since trial will take time for adjudication accused needs to be released.

7] APP stated that no separate argument was desired to be advanced and say itself may be considered for adjudication purpose.

8] Victim- child and her mother were heard in person. Victim- child stated that say (Exh.7) is proper. Her mother added that the accused used to trouble her daughter and hence he should not be released.

9] *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.

10] The prosecution challenged the release adjured for by the applicant- accused on the ground that if the accused is granted liberty it would thwart the course of case since the evidence can tampered with. The defence counteracted that the investigation has already been done. In this matter spot panchanama has already been carried out. Map has been got drafted. Statements of witnesses have already been recorded under sections 161 and 164 of Cr.P.C. Thus, the chances of the accused tampering with evidence as projected by the prosecution are found sporadic.

11] The prosecution opposed release considering the nature of charges ascribed against the accused. No doubt that the accused is charged of having outraged the modesty and stalked the victim-child which is a serious offence. However, none of the charges which have been invoked against him prescribe punishment of death or imprisonment for life. Thus, it does not fall under the category heinous offence.

12] Moreover, in addition to above referred facts and circumstances, the substratum of stage of trial also needs to be taken into account. The charge-sheet has been filed. The investigation is complete. No recovery or discovery at the instance of the accused is shown to be pending as would require his further physical custody. As has been held by Hon'ble Apex Court in catena of judgments any accused is to be kept in extended detention only when the same is imperative under factual matrix of the case. However, the stage of trial does not make it perspicuous in the instant case.

13] The victim- child and prosecution have opposed release expressing apprehension of re-occurrence of crime. However, mere apprehension cannot stampede the Court into complacent refusal from considering bail application. This is because 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 contends to reside within jurisdiction of this Court which has not been denied by prosecution. In fact, it is contended by them and is thus irrefragable.

14] Further the accused is in custody since the date of his arrest on 12/4/23. The matter is at the stage of framing of charge after filing of charge-sheet 8/6/23. The trial is yet to commence. Considering the number of witnesses cited in charge-sheet and the material on record the adjudication will take its time. The delay seen from record is not attributable to the accused. Thus, as held in plethora of cases this delay in progress of trial confers right on the accused to apply for bail.

15] The prosecution apprehends possibility of pressurizing victim- child on release of the accused. It is contended that since victim and the accused are neighbours and she is a school going child who requires to go on bicycle for attending the same each day the apprehension is valid. 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 of bail. Apprehension of absconsion, evasion, repetition can be addressed by imposing strict conditions as can address reservation of prosecution in this regard. The application thus deserves to be countenanced.

16] Before saying omega it is clarified that any observation made hereinabove 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 Amol Wasudeo Dighade, r/o. Kolhi, Tq. Babhulgaon, Distt. Yavatmal in relation to FIR No.225/23 registered at P.S. Babhulgaon for the offence punishable under sections 354-A, 354-D and 506 of the Indian Penal Code and sections 12 of Protection of Children From Sexual Offences Act be released on P.R. of Rs. 50,000/- (Fifty 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 before trial Court, failing which it shall be a ground for cancellation of bail.
- (iii) The accused not to indulge in any illegal activities or in committing the offence of like nature.
- (iv) He shall not foster any interaction with the victim, witnesses or with any of her relatives.
- (v) He shall produce verified copy of his Aadhar Card and other Address Proof.
- (vi) The surety shall produce verified copy of his/her *Aadhar* Card, contact detail, copy of Bank Pass-book and other address proof.
- (vii) He shall not leave the jurisdiction of this Court *sans* prior permission of this Court.

Date : 02/12/2023.

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