

MHCC050026802020



**IN THE COURT OF SPECIAL JUDGE UNDER THE PROTECTION OF  
CHILDREN FROM SEXUAL OFFENCES ACT, 2012 AT BORIVALI  
DIVISION, DINDOSHI, MUMBAI.**

**BAIL APPLICATION(Exh.3)**

**IN**

**SPECIAL CASE NO. 255 OF OF 2020**  
**(MHCC05-002680-2020)**

**Mohd. Azaz Rasul Pathan**  
aged about 37 years, Occ:  
An adult Indian Inhabitant  
residing at Bhatikal Building,  
Galli No.1, Pushpa Park,  
Malad(East), Mumbai.

**..Applicant/accused**

**Vs**

**The State**  
(Dindoshi Police Station)

**..Respondents**

Advocate Ms Tripathi for the applicant/accused.  
Spl. APP Ms. Malankar for the State.

**CORAM: H.H.THE SPECIAL JUDGE,**  
**SMT. H.C. SHENDE, (C.R.NO.11)**  
**DATE : 29<sup>th</sup> January, 2021.**

**ORDER**

The applicant/accused has moved this application U/sec.439 of Cr.P.C. for grant of bail in C.R. No.48/2020 for the offences U/sec.376(2)(f), (3) of Indian Penal Code and U/sec.6 and 10 of the Protection of Children from Sexual Offences Act, 2012, registered with

Dindoshi Police Station.

2 By way of application and through oral submission made by the Ld.Advocate for the applicant, it has been submitted on behalf of applicant that, accused is innocent person. He is implicated in this matter falsely. He is in custody since last one year. Charge-sheet is filed by the prosecution, thus for all practical purpose investigation is over. No fruitful purpose will serve in keeping the applicant in custody. Applicant has no criminal antecedents. He has fixed place of residence. He will neither abscond nor is likely to tamper with evidence. He needs to be released on bail, otherwise grave prejudice would cause to him. So, he be released on bail.

3 Per contra to it, the prosecution resisted bail application on the grounds mentioned in their detailed say Exh.4. Ld.APP Smt. Malankar relied on the same and further submitted that, applicant is father of the victim girl aged 13 years only. She was repeatedly raped by applicant by taking disadvantage of her situation. Her mother is having some psychiatric problem. Because of these forceful sexual relations committed by the applicant, the victim got pregnant of 3 months. She out of fear of threats given to her by the applicant kept mum and then opened up when she come to know about her pregnancy. The accused if released on bail, he will meet with victim and will pressurise to her or cause harm to her out of anger. So, he should not be released on bail.

4. Heard both the sides at length.

5. Perused the record. Admittedly, offence registered

U/sec.376(2)(f), (3) of Indian Penal Code and U/sec.6 and 10 of POCSO Act. The victim is real daughter of the applicant. Her statement is consistent with medical history given by her, so also statement U/sec.164 Cr.P.C. given by her to Ld.Metropolitan Magistrate court. The allegation made by the victim that, she was repeatedly raped by applicant i.e. her own father by giving threats. She is pregnant, so there cannot be ground of no medical report. The age of victim is 13 years only and she was assaulted by the applicant continuously for last two years i.e. since prior to date of filing of FIR. This is very heinous act committed by the applicant. The applicant is father of victim. So there is every possibility that on releasing the accused on bail, he will contact with victim and may cause harm to her. She is helpless girl already undergone a traumatic experience. There is material evidence available against the applicant. In my opinion, in all circumstances the safety of the victim will come in danger, if the applicant is released on bail. Hence, considering nature of offence, punishment provided to it and material evidence on record, this court is not inclined to grant bail to accused.

6. At last, in the circumstances and for the reasons mentioned above, this Court proceed to pass the following order :-

**ORDER**

Bail Application(Exhibit-3) is hereby rejected and disposed off accordingly.

**Dt.29.1.2021**

**( H.C.SHENDE )  
Special Judge under P.O.C.S.O. Act,  
Sessions Court, Borivali Division,  
Dindoshi.**

Dictated on : 29.1.2021  
Transcribed on : 29.1.2021  
Signed on : 30.1.2021  
Sent to dept. on :

**“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”**

**30.1.2021 at 3.05 p.m**

**Mrs.S.A.Kapare**

**UPLOAD DATE AND TIME**

**NAME OF STENOGRAPHER**

**Name of the Judge**

**: Smt. H.C. Shende(CR NO.12)**

**Date of Pronouncement of judgment/order**

**: 29.1.2021**

**Judgment/order signed by P.O. On**

**: 30.1.2021**

**Judgment/order uploaded on**

**30.1.2021**