

MHCC050026102021



IN THE SESSIONS COURT FOR GR.BOMBAY,
BORIVALI DIVISION,DINDOSHI,GOREGAON,MUMBAI.

BAIL APPLICATION EXH. 05
(C.N.R. NO. MHCC05-002610-2021)
IN
SPECIAL CASE NO. 177 OF 2021
IN
C.R.NO.85 OF 2021
MALWANI POLICE STATION

Mr. Pappu Hiralal Gupta,
Age : 32 years, Indian Inhabitants,
R/a : Nirankari Bhavan,
New Bhamrekar Nagar, Gali No. 7,
Ambujwadi, Malwani, Malad (W),
Mumbai - 400 095.

...Applicant

Versus

The State of Maharashtra
(Through Inspector of police,
Malwani Police Station, Mumbai.)

...Prosecution.

CORAM: H.H.THE SPECIAL JUDGE,
SMT.S.M.TAKALIKAR, (C.R.NO.12)

DATE : 4th August, 2021.

Learned APP Ms. Chauhan for State.

Learned Advocate Arvind Yadav for applicants /accused.

: ORDER:

Present application is filed by the accused/applicant under Section 439 of the Code of Criminal Procedure for regular bail in connection with C.R. No.85/2021 registered with Malwani police station for the offences punishable under Sections 363, 366 (A), 368, 376, 376a (2) (n) of IP Code r/w Sections 4, 5 (I), 6 and 12 of POCSO Act.

Facts in brief of prosecution case is as under :

2. The complainant is the mother of the victim. The victim is 16 years old. The allegations are that the accused kidnapped the victim from the lawful guardianship of the complainant and had penetrative sexual assault with the victim on many occasions. On the basis of the information received from the victim, the mother of the victim lodged complaint. On that basis, the above mentioned crime has been registered against the accused.

3. The prosecution has filed say below Exh.06. It is contended that there is possibility of repetition of crime. Also, the possibility of absconding. There is possibility of threatening the informant and other witnesses. Hence, it is prayed for rejection of the application.

4. The victim has filed her say below Exh.09. It is contended that the applicant took the victim at various places and had sexual intercourse with her. She prayed that maximum punishment be given to the accused as he has spoiled her life.

5. Learned advocate for the applicant invited my attention towards the FIR and report of medical officer and submitted that the victim is taking inconsistent stand. He also invited my attention towards the photographs filed along with the charge sheet and submitted that this is a clear case of love affair. The applicant has no criminal antecedents. His mother is HIV positive, she needs care. The applicant is only earning member of the family. Hence, it is prayed that bail be granted.

6. He relied on the case law of Sunil Mahadev Patil vs. State of Maharashtra in bail application No. 1036 of 2015 and Anirudha Radheshyam Yadav vs. State of Maharashtra in Criminal Bail Application No. 2632 of 2019 and submitted that bail be granted to the applicant.

7. Learned APP has submitted that the applicant is 32 years old and already married. He is having two children. The victim is not a grown up girl. Applicant is her neighbour. Therefore there is possibility of threatening the victim. Hence, she has prayed for rejection of the application.

7. Perused application. Say filed. Also considered submission of both the advocates.

8. No doubt, in the photographs filed in the charge-sheet victim and the applicant are shown together but upon perusal of the statement of the victim, it shows that the applicant by giving threats to the victim took her to various places. In her statement, the victim has specifically stated

that the applicant had forcibly sexual intercourse with her on many occasions. Nowhere there is mentioned that the victim was in love with the applicant. Further, the age of the victim is 16 years. The age of the applicant/accused is 32 years. There is much difference in the age of the victim and the applicant.

9. More over, the applicant is married and having two children then also as per the FIR he has kept forcible physical relation with the victim, on the promise to marry though he knows that he can not marry with the victim as he is already married and having two children. The allegations made against the applicant are serious in nature. Further, the applicant is neighbour of the victim. The victim has apprehension that the applicant will threat her. Taking into consideration the serious allegations made against this applicant supported by medical offence, in my opinion, it will not be just and proper to release the applicant on bail.

10. I have gone through both the case laws. In both the case laws, age of the victim was 15-16 years and age of the applicant was 20-21 years. In the case in hand, there is much difference in the age of victim and the applicant. In the said case laws, the applicant/accused was not married but in the present case the applicant/accused is married and having two children. Hence, with due respect to the above cited case laws, in my view, these case laws are not applicable to the present case.

11. In view of the above discussion on record, the applicant has not made out just and reasonable grounds to release on bail. Therefore, applications deserves to be rejected. Resultantly, I passed following

order :-

ORDER

- 1) Bail Application (Exh.05) is hereby rejected.
- 2) Bail Application (Exh.05) stands disposed accordingly.

Date : 04.08.2021

**(S. M. TAKALIKAR)
Additional Sessions Judge
Borivali (Div), Dindoshi, Goregaon.**

Dictated on : 04.08.2021.
Transcribed on : 05.08.2021
Signed on :06.08.2021.

Sent to Department on:

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

UPLOAD DATE AND TIME : 06.08.2021 at 12.07 PM

NAME OF STENOGRAPHER : Ms. MANISHA D. HIROLE

NAME OF THE JUDGE	:	HHJ SMT. S. M. TAKALIKAR (C.R.NO.12)
Date of Pronouncement of Order	:	04.08.2021.
Order Signed by the P.O. on	:	06.08.2021.
Order uploaded on	:	06.08.2021.