

MHNG010090782020



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Ajni

Spl.Case No.634/2020
State Vs. Sou. Sushila Sushil Paisadaili_& Oth.

Order (Below Exh.4)

(Passed on this 19th day of January 2021)

Applicant/accused – Fanindar @ Pawan Kapil Sharma @ Bharali has filed instant application at Exh.4 under section 439 of the Code of Criminal Procedure for grant of bail for the offences punishable under sections 376 (2)(n), 370, read with 34 of the Indian Penal Code and section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred as POCSO Act). The prosecution has strongly objected for grant of bail by filing say thereon.

2. The brief facts of the prosecution case are as under:

It is alleged by the prosecution that minor victim girl aged about 14 years was residing with her mother Sangita Rakesh Pande. Her father was addicted to liquor, therefore, her mother was residing separately from him and working at Balaji Restaurant. On 15.7.2020 mother of minor victim girl Sangita Rakesh Pande was taken away by one Sushil Paisadaili for providing job but they did not return back till now. Since then minor victim and her younger brother were residing at the house of Sushil Paisadaili. During stay accused Sushil always used to beat and abuse her. It is also alleged that from 21.9.2020 to 27.9.2020 at 9 to 10 a.m. wife of Sushil namely Sushila took her mother to hospital and accused

Sushil assaulted and established forcible sexual relation with minor victim girl. After 2-3 days and Sushil has taken minor victim girl at the house of his friend Pawan where both of them committed rape on her.

3. It is further alleged that both of them have also threatened minor victim girl stating that if she disclose about the incident to anybody, they will cut her face and the pieces will be thrown at the forest. It was reveals that wife of accused Sushila used to sale girls. It was also suspected that they might have sold the mother of minor victim girl also. Therefore, complainant lodged report at the police station. Subsequently on the basis of information received PSO registered the offence bearing No.512/2020 on 4.10.2020. After completion of investigation, Investigating Officer has filed the charge-sheet against the applicant and other accused.

4. Heard. Learned Advocate for the applicant/accused submitted that as pert prosecution story one Rakesh Pande, who is cousin brother of the complainant, was residing with Sangita Pande and two children, i.e. minor victim girl and Sagar Pande. On 14.7.2020 accused no.1 took Sangita Pande, They started to residing there with two children. While minor victim girl and her brother Sagar were residing at the house of accused Sushil. Accused no.1 sexually assaulted minor victim girl after 2-3 days, applicant/accused has also forcibly committed rape on minor victim girl.

5. The learned Advocate for the applicant further submitted that the applicant/accused was arrested on 9.10.2020 and he was remanded to M.C.R. 12.10.2020, since then he is in Judicial custody. As per prosecution case there were contradictions in the statement of witnesses. In the report it is stated that during 21.9.20 to 27.9.20 at 9 to 10 am accused sushil has established sexual relations with minor victim at his house, 2-3 days after accused Pawan came there and committed rape. On the contrary in the statement of witnesses it is stated that Sushil had been at the house of accused Pawan. They established sexual relations with the victim. The applicant is in judicial custody since 12.2.2020. He is young and only earning member in his family. Charge-sheet is filed. Therefore, by keeping behind him no fruitful purpose will be served and he is ready to abide terms and conditions if imposed while granting bail. Hence, the accused be released on bail.

6. The learned A.P.P. strongly opposed grant of bail and submitted that there is strong evidence against him. The medical report filed on record also supports the prosecution case. Accused is permanent resident of State of West of Bengal. There is apprehension that if he is released on bail he may abscond and may also tamper with prosecution witnesses. It is also contended that the previous bail application filed on 29.10.2020 by the applicant has been rejected on merit. The applicant has not filed copy of said order on record and suppressed the fact, therefore, application be rejected.

7. On perusal of complaint as well as statement of witnesses including minor victim girl, it appears that there are

direct allegations against applicant/accused showing his involvement in commission of offence of rape on victim aged about 14 years. It also appears that the applicants/accused has threatened minor victim girl if she disclose about the incident to anybody, they will cut her face and the pieces will be thrown in forest. The Medical report filed on record also supports the contention of the prosecution. There is also apprehension of the prosecution that if the applicant/accused released on bail, he will tamper with the prosecution witnesses. The applicant/accused being resident of State of West Bengal, he may abscond, will not be available for trial. The offences are serious in nature. The accused has threatened the victim minor girl if she disclose the incident.

8. From the documents filed on record it appears that the victim minor girl is aged about 14 years. Considering the seriousness of the offence and possibility of accused/applicant tampering with prosecution witnesses and his absconding if he is released on bail, it will not be appropriate to release him on bail. Moreover, the applicant has suppressed the fact of filing previous bail application and also not filed its copy on record. It is submitted that said application has been decided on merits. Hence without filing copy on record, it could not be ascertain whether there is a change of circumstances in entertaining the second application. This contention also goes against the applicant/accused in entertaining the present application.

9. On perusal of papers on record it reveals that there are some contradictory statements in the prosecution case about the place of committing rape on the victim but it is itself not sufficeint

to consider the submission of learned Advocate for the accused at this stage. Hence, considering the seriousness of the offence and threats given by the accused/applicant, I do not find merit in the submission of learned Advocate for the applicant/accused. Accepting the objection raised by the prosecution, application is liable to be rejected. Accordingly I pass the following order.

ORDER

Application at Exh.4 is hereby rejected.

Date : 19-01-2021

(R.M.Khan)

Extra Jt. District Judge and
Addl. Sessions Judge, Nagpur

CERTIFICATE

I affirm that the contents of this P.D.F. file of Order below Exh.4 are word to word as per original order.

Name of the Stenographer:

D.S.Palliwar