

MHCC050033252021



**IN THE COURT OF SPECIAL JUDGE UNDER THE
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES
ACT, 2012 AT BORIVALI DIVISION, DINDOSHI, MUMBAI
BAIL APPLICATION (EXHIBIT-3)
IN
POCSO SPECIAL CASE NO.230 OF 2021**

Samson Luis Koli

Age : 24 Years.

R/o. : Near Prince Court, Bazar Gully,

Near Malvani Church, Malad (W), Mumbai.**Applicant/accused**
V/s.

The State of Maharashtra

(At the instance of Malvani Police Station)Respondents

Advocate Mr.Rajesh More for the Applicant/accused.

Spl.A.P.P. Mrs. Geeta Malankar for the State.

Advocate Mr. Aakash Sharma for Intervenor.

**CORAM: H.H.THE SPECIAL JUDGE,
SMT. H.C. SHENDE, (C.R.NO.11)**

DATE : 20th July, 2017

O R D E R

The applicant has moved this application u/s.439 of Cr.P.C. for grant of bail in C.R. No. 254/21 for the offences punishable U/sec.363, 366-A, 368, 376, 376(2)(n), 376(3) of Indian Penal Code and u/s. 4, 5(l) and 6 of the Protection of Children from Sexual Offences Act, 2012 registered with Malvani Police Station.

2. By way of this application, it is contended by the Learned Advocate for the applicant/accused that the complainant of this matter is the mother of the victim girl. The complaint is filed with the allegations that the victim girl was kidnapped and was found in the custody of the applicant and so he has committed the offence with which he is charged. Actually the accused is innocent person. He has not committed any crime as alleged against him. His innocence can be proved during the trial but more important is that the parents of the victim girl are ready and willing to file an affidavit with the contention that they are ready and willing to accept him as son-in-law and they have no objection if this Court grants bail to the applicant considering his age and facts involved in the matter. In short it is a love affair and the applicant and the victim actually accepted each other as a husband and wife. Overall investigation is completed. The Charge-sheet is filed in this matter so nothing remains to be investigated and he can be released on bail.

3. In addition to it, the Learned Advocate for the accused pointed out that the informant who is the mother of the victim along with her husband has filed an affidavit on record stating that they have no objection to grant bail to the accused.

4. The prosecution, however, resisted the bail application by filing detailed say at Exh.4. It is contended by the Learned APP Smt. Geeta Malankar for State that the say filed by the prosecution itself makes it clear that the offence is very serious in nature. The accused if released on bail, he will cause hurdle in the process of recording statement of the victim u/s.164 of Cr.P.C. so he should not be released on bail.

5. Heard both sides at length.

6. To appraise the rival submissions made by both sides, I have gone through the record. The offence is registered U/sec.363, 366-A, 368, 376, 376(2)(n), 376(3) of Indian Penal Code and u/s. 4, 5(l) and 6 of POCSO Act. But the FIR dated 13/04/21 prima facie speaks that the offence initially was registered u/s.363 of IPC against the unknown person with the allegations that the victim went to take some amount from one witness of this matter and thereafter she was found missing so the present missing report was lodged. Thereafter she was found with the applicant as alleged by the prosecution and thereafter rest sections of sexual assault and penetrative assault on the victim who is aged 15 years and two months were added in this matter. On perusal of the statement of the victim dated 23/04/21, it appears that the victim and the applicant were knowing to each other since prior. The victim initially though contended that she was not a willing party for said assault but from the record, it appears that she accepted that she is in relation with him.

7. In addition to it, the parents of the victim girl appeared through Advocate Mr. Sharma who represented them both by filing their respective affidavits by mentioning that they have filed the complaint but they are ready to perform the marriage of their daughter with the applicant and they both have no objection to grant bail to the applicant.

8. On this backdrop and if the record speaks that the Charge-sheet is filed so further custody of the applicant is groundless. The accused is also a young person. In addition to it, after above mentioned affidavit, now the fate of the matter is clear because of the present attitude of the informant herself of giving no objection to grant bail to the applicant so in

my opinion, the applicant can be released on bail with certain conditions to be followed by him.

9. Hence, in the circumstances and for the reasons mentioned above, this Court proceed to pass the following order :

ORDER

1. Bail Application **Exhibit-3** is allowed.
2. **The applicant/original accused Samson Luis Koli be enlarged on bail on executing Personal Bond of Rs.15,000/- with one or two solvent sureties in the like amount** in C.R. No.254/21 for the offences punishable U/sec.363, 366-A, 368, 376, 376(2)(n), 376(3) of IPC and u/s.4, 5(l) and 6 of the Protection of Children from Sexual Offences Act, 2012 registered with Malvani Police Station on the following conditions :-
 - a) He shall not threaten or cause any harm to the informant, victim and her family members in any manner.
 - b) He shall not tamper with the prosecution evidence and threaten the informant, victim and the witnesses.
 - c) **He shall attend the concerned police station after his release once in two months on Thursday in second week of that month between 5.00 p.m. to 7.00 p.m. till completion of trial.**
 - d) He shall provide his registered residential address in Mumbai, native address proof as well as service place address proof and contact numbers and registered detailed residential address and phone number of his surety and his two near relatives at native within two weeks to the Investigating Officer.

- e) He shall not leave Mumbai and India without permission of the Court till completion of trial.
 - f) He shall attend the Court regularly on the date fixed and shall not remain absent for hearing unless exempted by the Court through his Advocate.
 - g) He shall not commit similar offence again.
 - h) The near relatives of the applicant to execute affidavit-cum-undertaking with identity, before the I.O. of concerned Pl. Stn. stating that he will take care of applicant, shall quarantine him in the house for 14 days after his release, the applicant will obey all conditions imposed in bail order of this Court.
 - i) The jail authority is directed to get the medical test of the applicant be done and be released him with the report only if he is not suspected of N-COVID 19. Otherwise he should not be released.**
 - j) On violation of any above conditions, bail shall stand cancelled without intimation.
3. Bail Application Exhibit-3 stands disposed of accordingly.

Date : 20.07.2021

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

Dictated on	: 20.07.2021
Transcribed on	: 23.07.2021
Checked and corrected on	: 26.07.2021
Signed on	: 26.07.2021
Sent to Dept. on	:

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

UPLOAD DATE

AND TIME : 26/07/2021 at 3.55 p.m.

Mrs. Vidya Pendharkar

NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ H.C.SHENDE (Court Room No.11)
Date of Pronouncement of Judgment/Order	20/07/2021
Judgment/Order signed by P.O. on	26/07/2021
Judgment/Order uploaded on	26/07/2021

BA Exh.3 in Spl.230/21

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ORDER