

MHCC050009712020



**IN THE COURT OF SPECIAL JUDGE UNDER THE
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES
ACT, 2012 AT BORIVALI DIVISION, DINDOSHI, MUMBAI
BAIL APPLICATION (EXHIBIT-8)
IN
POCSO SPECIAL CASE NO.79 OF 2020**

Ibrahim Hussain Raees Sayed

U. T. No.M-7671/10,

Thane Central Prison, Thane (W)-400601.Applicant/accused

V/s.

The State of Maharashtra

(At the instance of Malwani Police Station)Respondents

Applicant/original accused in person.

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

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

DATE : 23rd March, 2022

O R D E R

Present application is moved by the applicant through the Jailer of Thane Jail thereby contending that he was arrested in the above case and is in judicial custody since 11/11/19. He is from economically weaker strata of the society, works as a painter to support his maternal grandmother who is the only family he has live with. Due to his incarceration, his grandmother has to work in households as a maid to support herself. The family is unable to engage services of legal attorney. The applicant then aged 21 years old fell in love with the complainant's

daughter and the same was reciprocated by the girl. He was not aware that the girl was minor. He did not have intercourse with the girl at any time during their courtship of about one year. The girl being of Hindu religion, the parents objected her to have any relationship with the applicant who is a Muslim. The complainant, i.e. mother of the girl has falsely implicated him allegedly false and frivolous charge of kidnapping, rape and threatening because she objected to the applicant being a Muslim. He had no malicious or criminal intent to cause any hurt or harm to the girl physically or emotionally. Such arrest would form a dangerous precedent as if a girl would go for an outing say a picnic or a movie with a boy, with her own consent, would it be right to arrest the boy on charges of kidnapping and rape just because the mother of the girl objects to the friendship ? The Hon'ble Supreme Court of India has directed the Courts to grant bail in the matters of rape cases where relationships of love between the accused and the victim are well established and there is no prima-facie evidence of forced intercourse or physical hurt caused to the victim. The Hon'ble Court must sift through the evidence on record and use prudent judgment to decide the merit of the case. Merely locking up a young man for falling in love with a girl on false and motivated allegations is nothing but travesty of justice. He, therefore, prays to the Court to grant him bail u/s.439 of Cr.P.C. so that he can earn and arrange money to appoint a lawyer.

2. The Learned APP Mrs. Malankar for State has filed say on the application itself and also made oral submission that the offence is serious in nature. The victim girl is 15 year old. The allegations against the accused are very serious that he committed penetrative sexual assault upon

the minor victim girl. After Chargesheet, bail application was rejected. No change of circumstances, hence, praying to reject this application.

3. Heard the Learned APP Mrs.Malankar for State. The accused is in custody so I have gone through the record.

4. On the backdrop of the application moved by the applicant through the jailer, I have perused the whole record. The medical report of the victim girl was also called for on record to consider the facts on its own legality. On perusal of record, it reveals that the Charge-sheet has been filed since long. The Charge-sheet prima facie suggesting that the minor victim girl aged 15 years was threatened by the present applicant. He by threatening to the victim girl, had committed forcible sexual assault on her. She got scared. She did not return to her house and stayed away from the parents. It shows that she was in terrific scared and traumatic condition at the relevant time because of the act committed on her by the accused. The statement given by the victim girl before the police authorities, before the medical officer is consistent. The medical report of the victim girl prima facie suggesting that she was sexually assaulted. The matter, therefore, becomes very serious. It is not simple case of love relation or out of intimacy, a pair entered into the relation. The accused by threatening to the victim, has committed rape on her. Though now he is saying that it was a love relation but the statement of the victim is not suggesting the same. The medical report is supporting her version that she was raped by him so considering the severity of the offence, allegations made against the applicant by the victim and the medical report, I do not find any merit in the application made by the applicant to say that he is entitled to be released on bail.

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

ORDER

Bail Application Exhibit-8 stands rejected and disposed of accordingly.

Date : 23.03.2022

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

Handwritten order given on : 23.03.2022
Typed on : 23.03.2022
Checked and corrected on : 28.03.2022
Signed on : 28.03.2022
Sent to Dept. on :

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

UPLOAD DATE
AND TIME : 28/03/2022 at 4.00 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	23/03/2022
Judgment/Order signed by P.O. on	28/03/2022
Judgment/Order uploaded on	28/03/2022

BA Exh.8 in Spl.79/20

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ORDER