

MHCC050032232021



**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.227 OF 2021**

Sagar Jagmahendra Duraj
Sagar Jagmahendra Dulgajas per Charge-sheet.

Age : 30 Years, Occ. : Service.

R/o. : 4 Bali Kadam Chawl, Amba Wadi,

Parsi Panchayat Road, Near Vaimik Mandir,

Andheri (E), Mumbai-400 069.Applicant/accused

V/s.

The State of Maharashtra
(At the instance of MIDC
Police Station)

.....Respondents

Advocate Mrs.S. S. Nandewar for the Applicant/accused.

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 : 16th July, 2021

O R D E R

The applicant has moved this application for grant of bail u/s.439 of Cr.P.C. in C.R. No.175/21 for the offences punishable U/sec.376(2)(i) (j), 506 of Indian Penal Code and u/s.4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 registered with MIDC Police Station.

2. By way of this application, it is argued by the Learned Advocate for the applicant/accused that the applicant is innocent person, not committed any offence as reported by the informant. In fact the letter wrote by the victim girl when she was not under any threat or force itself makes it clear that he has not committed any sexual assault i.e. rape on the victim girl because it does not speak about any such kind of sexual harm caused to the victim by the applicant on any relevant time. The said letter is attached with the said Chargesheet by the police so it must have been written by the victim girl.

3. The Learned Advocate further relied on the Judgment in case of ***Sunil Mahadev Patil V. The State of Maharashtra (LAWS (BOM)-2015-8-295]*** and submitted that it is all consensual relation. The victim is a consenting party. The medical report is also not supporting to the theory put up by the prosecution as it does not suggest about any sexual or injury caused to the victim. The matter is coming out of a love affair in between the victim and the applicant. Now the Chargesheet is filed. Nothing is remained to be interrogated or investigated with the applicant so he be released on bail.

4. Per contra, the prosecution by filing say at Exh.4 resisted the bail application strongly. The Learned APP Smt. Geeta Malankar for State also relied on the said grounds of objection and further submitted that the victim girl is aged of 15 years. Actually the applicant pressurized her to meet him and thereafter by calling in his office has committed sexual assault on her. He also gave threats to cause harm to her mother so she kept mum. Later on as she missed her mensuration so the facts came out

and she disclosed that she was sexually assaulted by the accused by taking her at his office. They all are residing in the same area. The accused if released on bail, he will commit same offence with her. Considering her age and gravity of offence so also the threat given by the accused, he should not be released on bail.

5. Heard both sides at length. Perused the record.

6. To appraise the rival submissions made by both sides, I have gone through the application, say and rest record. The offence is registered u/s.376(2)(i)(j), 506 of IPC and u/s.4, 8 and 12 of POCSO Act. The record apparently makes it clear that the victim girl is below 16 years of age. Her date of birth is 31/08/06. The victim gave specific information that on the alleged day of the incident i.e. on 12/03/21 she was called by the accused at his office where he behaved indecently with her. Out of fear, she has not disclosed the total incident. But later on she disclosed that she has missed her menses. She was assaulted sexually by committing forceful sexual act with her against her wish without her consent. Her statement before the medical officer is consistent with the statement given by her before the police. The statement of the victim girl u/s.164 of Cr.P.C. recorded by the Learned Metropolitan Magistrate Court also speaks that the accused has committed forceful sexual intercourse with her. On 12/03/21 out of fear, she kept mum so over all record is prima facie suggesting that the victim was sexually assaulted by the present applicant who is considerably aged than the victim girl.

7. Further as submitted by the Learned APP that they all are residing in the same area so out of anger, he may cause harm to her, may

pressurize to her, this possibility also cannot be ruled out so considering the prima facie record, grave allegations of rape as reported, the submission made by the Learned APP and the fear in the mind of the victim arising out of her statement, this Court is not inclined to grant bail to the accused.

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

ORDER

Bail Application Exhibit-3 stands rejected and disposed off accordingly.

Date : 16.07.2021

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

Dictated on : 16.07.2021
Transcribed on : 20.07.2021
Checked and corrected on : 22.07.2021
Signed on : 22.07.2021
Sent to Dept. on :

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

UPLOAD DATE
AND TIME : 22/07/2021 at 3.10 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	16/07/2021
Judgment/Order signed by P.O. on	22/07/2021
Judgment/Order uploaded on	22/07/2021

BA Exh.3 in Spl.227/21

:: 5 ::

ORDER