

ORDER BELOW EXH.1

1] Perused application and say. Heard Advocate for applicant and APP for the State.

2] Applicants nos.1 and 2 are real brothers and applicant no.3 is father of applicants nos.1 and 2. Main accused Amol Chavan is real brother of applicants nos.1 and 2 and son of applicant no.3. Applicants apprehend their arrest in C.R.no.184/17 registered at Kondhawa Police Station for the offence punishable under section 363,366A,376(2)(J)(N),506,323 read with 34 of Indian Penal Code and under section 4,6,8,12 of the Protection of Children from Sexual Offences Act, 2012. It is alleged that during investigation it revealed that main accused Amol kidnapped minor victim by inducing her. Firstly, report under section 363 of Indian Penal Code was filed by the mother of victim. After recording statement of the victim, it revealed that main accused went to the working place of the victim on 21.05.2017 at 4.00 p.m. He hold hand of the victim and compelled her to sit in a four wheeler vehicle under pretext of marriage. He took her with him. In that vehicle these applicants were present and they threatened victim and also threatened that she has to marry main accused Amol. They all took her at Koregaon Pachange Vasti and keep the victim in a rented room. In that rented room main accused Amol repeatedly committed sexual intercourse with the victim against her wish. During that period present applicants were coming in that rented room. Therefore, it is prosecution case that present applicants helped main accused in the offence of kidnapping, inducement and rape with the victim.

3] According to applicants, they are falsely implicated in this matter. Main accused is missing from 20.05.2017 and applicant no.3

filed missing report. Applicants are not knowing whereabouts of the main accused. Therefore, they are not concerned with the offence. There is no question of recovery of discovery at the hands of these applicants. So, their custodial interrogation is not required. They are working in police department and reputed person. They have no criminal antecedents. They are ready to abide the conditions. Therefore, the prayed to grant them protection under section 438 of Cr.P.C.

4] Application is strongly resisted on the ground that present applicants did not remain present during inquiry though notice under section 41(1)(A) of Cr.P.C. was issued to them after names of applicants were revealed during statement of victim. Therefore, no investigation is done in respect of allegations made by the victim against them. It is proper and necessary to investigate the matter as per statement given by the victim. Therefore, custodial interrogation with these applicants is required.

5] These applicants are working in police department and they have knowledge about the whereabouts of main accused. So, in that regard it is necessary to inquire with them. It is also required to seize vehicle used in the offence and to inquire about rented room but as applicants are not co-operating investigating machinery, it is possible that they will tamper prosecution evidence. They will threat and pressurize victim and witnesses. So, as detailed investigation is required in this matter, they prayed to reject the application.

6] Missing report was filed on 22.05.2017 by the mother of victim in Kondhawa Police Station. After inquiry police of Kondhawa Police Station issued intimation dated 01.11.2017 to the applicants in Crime no.184/17 of Kondhawa Police Station for the offence

punishable under section 363,366A,376(2)(J)(N),506,323 read with 34 of Indian Penal Code and under section 4,6,8 and 12 of POCSO Act. It is undisputed fact that main accused Amol is brother of applicants nos.1 and 2 and son of applicant no.3. Applicants nos.1 to 3 are working in police department. They are close relatives of main accused.

7] As per prosecution case main accused kidnapped victim under promise of marriage, induced her and when he was forcibly taking victim, these applicants were present in the vehicle used in the offence. As per statement of victim these applicants threatened her and asked her to go with them quietly otherwise they would beat her. They also threatened her to marry with the main accused. They all took her to Koregaon, Pachange vasti and detained her in a rented room. In that room from time to time main accused committed sexual intercourse with this minor victim and present applicants were visiting that room and both of them.

8] Being police officials it is expected from them to protect common people and citizens. However, as per prosecution case these applicants helped main accused in the serious offence of kidnapping, procurement of the minor girl and forcible sexual intercourse by the main accused with the victim forcibly. Applicants who are police officials are suppose to help weaker section of the society and not to indulge themselves in such activities. Per contra as per prosecution case, they helped main accused by providing place where main accused sexually abused minor victim. In view of statement given by the victim, it is necessary to investigate the matter in detail. If the applicants are granted protection under section 438 of Cr.P.C. there will not be proper investigation in this matter. Yet vehicle used in the offence is to be recovered.

9] Advocate of applicants submitted that applicants were on duty during relevant period and for that purpose they filed on record copies of log book. But matter has to be investigated in terms of statement given by the victim and for that purpose custodial interrogation with the applicants is necessary. Medical papers of the victim are also positive. There is history of sexual intercourse by main accused Amol against will of the victim. In the history also name of present applicants is mentioned. Therefore, considering nature and gravity of the offence, thorough investigation is required. It is the say of police that applicants are not co-operating investigating machinery by remaining present though intimation was given. In such circumstances, in view of nature and gravity of the offence, application deserves to be rejected with following order -

ORDER

Application is rejected.

Pune.

Date – 29.11.2017.

(R.V.Adone)

Addl.Sessions Judge, Pune.

“ I affirm that the contents of the P.D.F. File Judgment are same word for word as per original judgment.

Name of Steno	- S.V.Thakar,
Court Name	- Smt. R.V.Adone, Addl.Sessions Judge,Pune.
Date of Order	- 29.11.2017
Order signed by P.O.	- 29.11.2017
Order uploaded on	- 02.12.2017

