

MHCC050017802022



**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
REMAND APPLICATION NO.145 OF 2022**

Ishtiyak Mustakim Ahmad Khan

Age : 19 Years.

R/o. : Ganpat Patil Nagar, Street No.4,

New Link road, Borivali (W),

Mumbai-400 092.

....Applicant/accused

V/s.

The State of Maharashtra

[Through M. H. B. Colony Police Station].....Respondents

Advocate Mr. Roshan Yadav for Applicant/original accused.

Spl. APP Mrs. Geeta Malankar for State.

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

DATE : 27th April, 2022

ORDER

The applicant has moved this application u/s.439 of Cr.P.C. for grant of bail C.R. No.660/22 for the offences punishable U/sec.354-D and 506 of Indian Penal Code (Hereinafter referred to as "IPC" in short) and u/s.12 of Protection of Children from Sexual Offences Act, 2012 (Hereinafter referred to as "POCSO Act" in short) and u/s.67-A of Information Technology Act registered with M.H.B. Colony Police Station.

2. The Learned Advocate on behalf of the applicant/accused by way of this application and through oral submission submitted that the applicant arraigned as an accused in Crime No.660/22. The victim and the accused were staying in the same locality. The family of the victim was also very well acquainted with the accused. In the year 2020 the victim's mother lodged a complaint against the applicant in C.R. No.622/20 registered by M.H.B. Colony police station u/s.363, 376 of IPC and u/s.4, 8 and 12 of POCSO Act. The applicant repeatedly sent a message to the victim from his Instagram account. She closed her Instagram account. The accused realized that the informant was using her brother's Instagram account by closing her account. The accused threatened the informant on her brother's Instagram account, "Jo muz pe case kiya hai, vo vapas lo nahi to mai tumhari aur tumhare gharwalo ki thumhare behan ki zindagi khrab kar dunga. Tune case vapas nahi liya to mai tere sath tere gharwalo ka bura hal kar dunga. Aab dekh mai teri zindagi kaise barbard karata hu aur jo maine tere sath kiya hai vo teri chhoti behan ke sath karunga, meri girlfriend Jhanvi Bhabhi behane tuze bahot maregi, tu Jarinam ko janati nahi kya ? Dilshan muze support karta hai, Dilshan ne uski girlfriend Mina jaise torture kiya tha, vaise mai tuze torture karunga tumhe itna torture karunga ki tum bhi marane ke liye majboor ho jayegi." These are false allegations. The applicant has been falsely implicated by the informant by alleged offences. It is easy to create fake I.D. by anyone. Instagram I.D. which is not applicant's I.D. The informant herself was giving the messages to the applicant and forced him to marry with her otherwise she will file the false fake complaint against him. They knew each other since 4 years where they had a love affair and the informant along with the family member knew about this. He is in custody since 05/04/22. He is a

permanent resident of Mumbai. If he is released on bail, he will attend the police station.

3. Per contra to it, the prosecution by filing say at Exh.4 in detail strongly resisted the application on the grounds that the applicant is very aggressive in nature. He has committed sexual assault on her prior to this FIR. His seized mobile is yet to be sent to FSL. Statement u/s.164 of Cr.P.C. of victim girl and statement of witnesses is yet to be recorded. Information of instagram account of applicant is yet be collected. If he is released on bail, he will threaten the victim girl. Investigation is under progress so he should not be released on bail.

4. The Learned APP Mrs. Malankar reiterated these grounds of objection and gave written submission that the offence is serious in nature. I. T. Act is applicable. Seized mobile is sent for CA and report is awaited. This is second offence. There is possibility of contacting victim by him so he should not be released on bail.

5. Heard both sides at length.

6. The present crime No.660/22 is registered u/s.354-D and 506 of IPC and u/s.12 of POCSO Act and u/s.67-A of I. T. Act. The Learned Advocate for the applicant argued that all the offences are bailable and the punishment for it is upto five years imprisonment only. Nothing is remained to be investigated into this matter. The applicant is innocent. He will not pressurize the informant or victim so he be released on bail. On the other hand, as per the prosecution, one serious crime is already registered against him u/s.363, 376 r/w.34 of IPC and u/s.4, 8, 12 , 21 of

POCSO Act. Charge-sheet is filed in the matter. Applicant started harassing to the victim by sending indecent defamatory messages to her. She has given screen shots of copies of the same to show how she was pressurized by him by sending messages through mobile. When she stopped using her own mobile and was using mobile of her brother, the applicant sent threatening messages on the mobile of brother of victim. She in her statement and FIR narrated how she was threatened by him. The offence u/s.354-D of IPC if committed for first time then it is bailable. But so far as the offence u/s.67-A of I.T. Act , it is non-bailable and punishment is upto five years and fine of Rs.10 lacs. There is prima facie record showing that the accused by using social media account threatened to her against whom also serious allegation of rape is made. Investigation is under progress. The Learned Advocate though is saying that the victim was inducing him, was sending messages to him but at this juncture, we cannot jump on any conclusion and accept that copies of messages produced on record by the defence were sent by the victim. It is a part of investigation which is under progress. Threats given and the intention disclosed by the applicant through said threats is also very serious, needs to be taken in consideration while deciding bail application. On the backdrop of overall circumstances, I do find reasonable force in the submission made by the Learned APP that if he is released on bail, he will again cause harm to her, may cause hurdle in investigation which is at primary stage so I am not inclined to grant bail to the accused.

7. Hence, considering the circumstances and for the reasons mentioned above, this Court proceed to pass the following order :-

ORDER

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

Date : 27.04.2022

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

Dictated on : 27.04.2022
Transcribed on : 29.04.2022
Checked and corrected on : 29.04.2022
Signed on : 29.04.2022
Sent to Dept. on :

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

**UPLOAD DATE
AND TIME : 29/04/22 at 4.45 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	27/04/2022
Judgment/Order signed by P.O. on	29/04/2022
Judgment/Order uploaded on	29/04/2022