



Sections 363, 376 of the Indian Penal Code and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act” for short).

3. Applicant’s first bail application was rejected by this court on 3<sup>rd</sup> February, 2020 and the trial Court was requested to expedite the trial. The applicant was granted liberty to renew the request for his enlargement on bail in case the trial does not commence before 31<sup>st</sup> December, 2020. Yet, the trial has not commenced.

4. Herein, the victim was 14 years and 3 months old as on date of the alleged incident. Complainant is mother of the victim. The applicant was apprehended on November, 2018. The investigation is over and the chargesheet has been filed.

5. It appears from the report that on 26<sup>th</sup> November, 2018 victim's mother lodged a report to the police that, a unknown person had kidnapped her minor daughter. Whereupon the offence under Section 363 of the Indian Penal Code came to be registered. On 30<sup>th</sup> November, 2018 in the supplementary statement, the complainant informed the police that, victim told her that on 24<sup>th</sup> November, 2019 when she was at the fish market, her friend's father, Santosh Halwai, dragged her to an isolated and lonely place and sexually assaulted her. Whereafter victim informed the incident of sexual assault to her friend, Vilas. It is alleged, Vilas took the victim to the same place on the pretext of seeing the spot of the incident. It is alleged that, at the same place, Vilas also sexually assaulted her. It appears on 26<sup>th</sup> November, 2018, the police found the victim was moving around the market place, whereafter the victim was taken to the police station. Thus, after the recording the supplementary statement,

offence under Section 376 of the Indian Penal Code and Sections 4 and 8 of the POCSO Act, came to be registered against the applicant and one, Vilas.

6. Learned Counsel for the applicant, has taken me through the chargesheet. It is submitted that the applicant has been falsely implicated in the case, in as much as, there is no evidence at all to show his complicity in the subject crime, except the statement of the victim's mother. It is submitted, material on record does not show or even suggest that the applicant either knew the victim or his family members. It is submitted that, prosecution has even recorded the statement of the applicant's daughter, who according to the prosecution, is a friend of the victim.

7. It appears, the victim left her house at her own wish since her mother refused to pay Rs.450/- for a trip arranged by the school. Upset with this fact, she left the

house on 24<sup>th</sup> November, 2018 at around 7:00 p.m. She did not return home till night. Whereafter on 26<sup>th</sup> November, 2018 at around 7:00 p.m. mother reported the incident to the police. It appears, the victim was found by the police personnel, when she was roaming alone in the market place. Soon thereafter, she was sent for medical examination. However, she declined medical examination, which is evident from the 'negative informed consent' recorded by the Medical Officer. Her narration to the Medical officer, suggests, she had offered resistance to and shouted for help and also slapped the applicant 2-3 times but nobody came to help her. However, complaint/supplementary statement is silent, as about the resistance offered by the victim.

8. In consideration of the facts of the case, as on today, there is no other evidence, except the statement of victim's mother. Infact, victim's statement, has not been recorded in terms of Sections 24 and 25 of the POCSO Act.

Besides, in my view, the prosecution ought to have collected such other evidence to suggest and indicate that, applicant's daughter is friend of the victim and thus the victim knew the applicant. Admittedly, the statement of the applicant's daughter has also not been recorded. Be that as it may, the narration of the victim to the Medical officer suggests, that the alleged incident had taken place at 7:00 p.m. in public place i.e. at 'market' in Village-Chakala. In the circumstances, the prosecution was expected to cite atleast a witness, to corroborate victim's narration and her presence at or around the place of the incident. Thus, in consideration of the facts of the case, today I am left with the statement of the victim's mother (not even, victim's statement). Additionally, the victim has declined her medical examination. Though, Learned Counsel appearing for the complainant, disputed this fact; however, in view of the 'informed negative consent' reported by the Medical

Officer, I have no reason to accept the contention of the Counsel for the complainant.

9. Herein the applicant has no criminal antecedents. The apprehension of the complainant that, if the applicant is released, he may influence the victim and his family members, can be taken care of by directing the applicant to stay out of the jurisdiction of the concerned Police Station. Herein, though the trial Court was requested to commence the trial in December, 2020, the trial has not commenced. In the prevailing situation of pandemic of COVID-19, the trial is not likely to commence in the near future. In consideration of the facts of the case, the application is allowed. He is directed to be released on bail on the following conditions :

### **ORDER**

- (i) The applicant arrested in Crime No. Crime No. 569/2018 registered at Andheri Police Station shall

be released on bail on executing P.R. bond for the sum of Rs.30,000/- (Rs. Thirty Thousand only) with one or more sureties in the like sum.

(ii) The applicant shall live out of the jurisdiction of Andheri Police Station. The learned Counsel for the applicant, on instructions states that, applicant shall stay at Panvel, District-Raigad. The statement is accepted.

(iii) The applicant shall provide particulars of his new residence and his contact details including the address of his native place to the Investigating Officer within a week from his release from the jail.

(iv) The applicant shall report to the Panvel Police Station, twice a month i.e. second and fourth

Monday between 11:00 to 1:00 p.m. from May, 2021  
till the charge is framed.

(v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

9. The application is accordingly allowed and disposed of.

10. It is made clear that, observations made hereinabove, shall be construed as expression of opinion for the purpose of granting bail only and the same shall not, in any way, influence the trial in other proceedings.

**(Sandeep K. Shinde, J.)**