

Versus

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Ms. Dhruti Kapadia, appointed by legal-aid for Respondent No.2.

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DATED : 24 NOVEMBER 2022

P.C. :-

This is an application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail.

2. The applicant came to be arrested in Crime No. 219 of 2020 registered at Radhanagari Police Station, Kolhapur for the offence punishable under Sections 376, 376(AB) of Indian Penal Code and Sections 4, 8, 10, 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

3. I have heard the learned Counsel for the applicant and the learned APP for the State and the learned Counsel for Respondent No.2.

4. According to the mother of the victim, on the day of incident, which took place on 2nd November 2020, the victim who at the relevant time was 2½ years old was repeatedly urinating, in her clothes, which she found to be unusual. She, thus, checked the victim's private part and found that something wrong was done with her. According to the complainant, she made enquiry with the victim and found that the present applicant took the victim to his house, he removed her undergarment and inserted his finger in her private part.

5. The learned Counsel for the applicant submits that there are lot of contradictions and omissions in the statement of the witnesses. It is submitted that the applicant is in jail for more than two years. It is submitted that during medical examination of the victim no injury was found to the private part of the victim. It is thus submitted that the applicant be released on bail.

6. On the other hand, the learned APP for the State and the learned Counsel for the Respondent No.2 submit that the applicant is involved in the serious offence of penetrative sexual assault. It is submitted that considering the nature of offence, the applicant may not be released on bail.

7. I have perused the charge-sheet. It appears that victim was medically examined and except tenderness no other injury was found on the private part of the victim. Prima facie therefore case appears to be of

sexual assault and not penetrative sexual assault. The applicant is in jail for more than two years. I am therefore inclined to release the applicant on bail. Hence, the following order is passed :

- (i) Application is allowed.
- (ii) The applicant - Kunal @ Sonya Sarjerao Kamble be released on bail in Crime No. 219 of 2020 registered at Radhanagari Police Station, Kolhapur for the offence punishable under Sections 376, 376(AB) of Indian Penal Code and Sections 4, 8, 10, 12 of the Protection of Children from Sexual Offences Act, 2012, on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- (iii) The applicant shall not stay at Village : Kaulav, Tal : Radhanagari, District : Kolhapur till the conclusion of trial and shall seek permission of the trial court if he is required to enter the said village.
- (iv) The applicant after his release shall furnish his residential address and his mobile number to the Investigating Officer.

(N.R. BORKAR, J.)