

CRIMINAL BAIL APPLICATION NO. 2553 OF 2022

V/s.

Ms. Pallavi N. Dabholkar-APP for State.

DATE : 30th October 2023.

1. The applicant who is accused no. 2 has made this application for bail in Crime No. 173 of 2022 registered with Pandharpur Taluka Police Station, Dist-Solapur for the offences punishable under sections 376, 376(2)(n) of Indian Penal Code (for short 'IPC') and under Sections 4,8, 12, 21(1) and 42 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO' Act).

2. Learned advocate for the accused no. 2 submitted that the accused no. 3-Vishal who is concluded to be the biological father of the male child born to the victim has been granted bail by this Court

(Coram: Shivkumar Dige, J, vide order dated 30th August 2023). The learned advocate submitted that as far as the applicant -accused no. 1 is concerned, the DNA report has excluded him to be the biological father of the male child born to the victim. Learned advocate submitted that the case of the accused no. 1 is therefore on a better footing than the case of accused-Vishal. Learned advocate submitted that on the ground of parity this accused is entitled for bail. Learned advocate further submitted that the age of the victim was more than 17 years and 7 months on the date of crime, she was fully capable of understanding the consequences of the act. Learned advocate submitted that though the defence of consensual sexual act may not be available to the accused, but, the facts on record indicate that it was a consensual act. Learned advocate submitted that in the teeth of the material on record, further incarceration of the accused is not warranted. Learned advocate submitted that the accused is ready to abide by conditions that may be imposed by this Court.

3. Learned APP submitted that initially the name of the accused – Vishal was not stated in the FIR. Learned APP pointed out that in the FIR role was only attributed to accused no. 1. Learned APP submitted that simply because of the negative DNA report the accused

has no right to claim the bail. Learned APP submitted that in the facts and circumstances, the ground of a parity is not available to the accused no. 1, inasmuch as more serious role was played by him in sexually abusing the victim. Learned APP submitted that possibility of the accused threatening the prosecution witnesses including victim and family members and tampering with the prosecution evidence cannot be ruled out, if he is enlarged on bail. Learned advocate for the respondent no. 2, victim has adopted the submissions advance by learned APP.

4. It is not out of place to mention that when the application of accused – Vishal was decided on 30th August 2023, the DNA report where Vishal has been found to be biological father of the child was before this Court. This Court in taking into consideration the age of understanding of the victim to know the consequences of the act granted bail to Vishal. In view of DNA report excluding the accused no. 1 being the biological father of the child, his case stands on better footing than the case of accused – Vishal. Another accused i.e. accused no. 2, Datta Khare was released on bail by the Sessions Court.

5. In my view, considering the role attributed to this accused and the facts that his DNA report is negative, he deserves parity with

accused no. 3 – Vishal. In the facts and circumstance, I am of the view that accused has made out a case to release him on bail. As far as apprehension put forth by the learned APP is concerned, the same can be taken care of by imposing appropriate conditions. Hence, the application is allowed on the following terms and conditions:-

ORDER

- (i) The criminal application is allowed.
- (ii) Applicant/accused – Kiran Shashikant Davane be released on bail in Crime No. 173 of 2022 registered with Pandharpur Taluka Police Station, Dist-Solapur for the offences punishable under sections 376, 376(2)(n) of Indian Penal Code (for short 'IPC') and under Sections 4,8, 12, 21(1) and 42 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO' Act) on his furnishing P.R. Bond in the sum of Rs. 25,000/-- (Rupees twenty – five thousand only) with solvent surety in the like amount.
- (iii) The applicant shall inform his latest place of residence and mobile number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Investigating Officer.
- iv) The applicant shall not enter the limits of Pandharpur Taluka during the pendency of the trial,

except for the purpose of attending the trial at Pandharpur and that too with a prior intimation to the Pandharpur Police Station.

(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.

6. The application is disposed of in the aforesaid terms.

(G.A. SANAP, J)