

The State Of Maharashtra and Anr. ... Respondents

API, Khose S.L, Lonikalbhor Police Station, Pune City, Present.

DATE : 22ND OCTOBER, 2024.

2. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No.449 of 2023, registered with Loni Kalbhor Police Station, Pune for the offences punishable under Sections 376, 376(2) (n), 376-D, 506 and 452 of the Indian Penal Code and under Sections 4, 8 and 12 of the Prevention of Children from Sexual Offences Act, 2012 (for short, 'POCSO').

3. The applicant who is 22 years old is the accused no. 2 in the present crime. The victim has alleged that the applicant and the co-accused repeatedly sexually assaulted her.

4. In the above referred backdrop, having gone through the charge-sheet and the relevant material collected by the IO and the statement of the victim who is 16 years and 11 months of age, shows that on 12.07.2023 i.e the day before lodging of FIR, the accused no. 1 entered into the room of the victim and she saw the applicant outside the room. Thereafter, it is alleged that the accused no. 1 closed the door of the room and threatened her and in the meantime, her mother came there and she caught hold the accused no. 1.

5. It is evident from the said statement that when her mother came, she helped the accused no. 1 to hide under the cot and put the lights off. Whereas, she could have immediately disclosed the alleged incident to her mother instead of doing so she helped the accused no. 1 to hide under the cot.

6. Thus, it creates doubt about the prosecution story that there was element of threat behind sexual assault by the applicant.

7. The learned counsel for the applicant states that the prosecution is not producing the CDR for the reasons that if the same is produced it will be clear that there was a love affair between the applicant and the victim. The learned counsel for the applicant further tried to point out certain photographs to show the relations between the applicant and the victim and further to point out that there was no element of threat or coercion as alleged in the complaint. To show that

the victim was scared and therefore, she did not disclose the repeated sexual assault committed by the accused to her mother, nothing is pointed out that the applicant and accused no. 1 are the habitual offender. On the contrary, there are no antecedents against him of similar nature or otherwise. .

8. The learned APP points out that medical report supports the case of the prosecution. However, after going through the same, there is no definite opinion given by the Doctor.

9. The learned counsel for the victim, on the other hand argues that it is case of gang rape. However, considering the above referred facts, it cannot be accepted.

10. The Co-ordinate bench of this Court while considering the prayer for grant of bail in a similar matter, has made following observations in the order dated 6th April 2022 in Criminal Bail Application No. 127 of 2022, which reads thus:

“8. There is no manner of doubt that the victim being below the age of 18 years, is a ‘child’ within the meaning of the said Act. However, at the same time, it is necessary to note that the victim had attained the age of 16 years and 6 months and ought to be aware of the nature and the consequences of the act. There are circumstances to indicate that there was no element of force or coercion at the instance of the Applicant in having physical relations with the victim. It is significant to note that the medical report vide Clause 15(F) shows that the Applicant had even used protection (condom) during the relationship. The investigation is complete and the charge-sheet is filed. The Applicant is in

custody for about two years and six months. I do not find that detention of the Applicant behind bars is warranted pending trial”.

11. Thus, considering the above referred backdrop, I am of the opinion that the applicant is entitled for grant of bail. However, at this stage the learned APP and the learned counsel for the respondent no. 2-victim have expressed an apprehension if the applicant is released on bail he may pressurize the prosecution witnesses and in that case there would be no fair trial. Thereupon, the learned counsel for the applicant, on instructions, makes a statement that the applicant is ready to abide by any condition including the condition not to enter into Pune City, till the conclusion of the trial.

12. Accordingly, I pass the following order:

ORDER

- i) Criminal application is allowed;
- ii) It is directed that the applicant be released on bail in Crime No.449 of 2023, registered with Loni Kalbhor Police Station, Pune for the offences punishable under Sections 376, 376(2) (n), 376-D, 506 and 452 of the Indian Penal Code and under Sections 4, 8 and 12 of the Prevention of Children from Sexual Offences Act, 2012 (for short, ‘POCSO’), on furnishing P.R.Bond of Rupees Twenty-Five Thousand with one solvent surety in the like amount;
- iii) The applicant shall not enter into Mumbai and territorial jurisdiction of Pune City, till the conclusion of the

trial;

iv) The applicant shall provide his address and name of the nearby police station to the IO, which he shall attend the Police Station on 1st day of every month between 10.00a.m. to 11.00 a.m., till the conclusion of the trial except on the date of trial;

v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;

vi) Liberty is granted to the State to apply for cancellation of bail in case of any breach of condition or if the applicant commits similar offence;

vii) The applicant shall attend the trial before the trial Court regularly on every date unless exemption is granted by the trial Court.

13. The application is disposed of.

(ANIL S. KILOR, J)