

MHCC050039712023



IN THE COURT OF SESSIONS, AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI

BAIL APPLICATION EXHIBIT-10
IN
REMAND APPLICATION NO.260 OF 2023

Mr. Chandramohan Bhagwan Jha,
Age : 25 yrs., Occupation : service,
Indian Inhabitant, Permanent address
At Balha Benipur, Darbhanga, Patna,
Bihar : 847 103 and current address at
Simla House, Nepean sea Road,
Near P. D. P. Garden, Malbar Hill, Mumbai **..Applicant/accused**

V/s.

The State of Maharashtra
(Through D. N. Nagar Police Station) ..Respondents

Advocate Prem Patil, for Applicant/accused.
Spl. APP Mr. A. A. Deotarse for State.
Advocate Ayub Khan, intervenor.

CORAM: H.H.THE SPECIAL JUDGE,
Ms. S. J. ANSARI, (C.R.NO.11)
DATED : 26th September, 2023

ORDER

The present application has been filed by the Advocate for the accused who has been arrested in Crime No.445/2023 registered by D.N. Nagar Police Station for the offences punishable u/s. 363, 376, 376 (2)(n) of Indian Penal Code, 1860 (hereinafter referred to as "IPC") and u/s. 4 and 8 of the Protection of Children

from Sexual Offences Act, 2012(hereinafter referred to as “POCSO Act”).

2. During the pendency of the said bail application the case diary had been called. The charge-sheet was then filed yesterday. Hence, the material as collected during the course of the investigation is now available before me due to which the matter is being taken up for orders. A perusal of the said charge-sheet will show that on 19.07.2023, the 16 years old victim girl's mother had lodged a report with D.N. Nagar Police Station about her minor daughter having gone missing. Initially therefore, the offence under Section 363 of the IPC came to be registered against an unknown person. Subsequently, the efforts of the police bore fruit and they were able to trace the 16 year old victim to a place where she was living with the accused in Delhi. While residing in Delhi, the victim was informed by the relatives of the accused about her mother having lodged a missing report regarding her with the police station in Mumbai. Subsequently, she and the accused appeared before the police on 31.07.2023, where her i.e. the victim's statement came to be recorded. In the course of the same, the victim stated that she had become acquainted with the accused when he had come to her area for some work. They had then become friends, after which they started chatting on Instagram. They then met while going to Calcutta in a train. The victim then asked the accused whether he would marry her, at which he agreed to do so. But he stated that he would marry the victim only after she completed 18 years of age.

3. By this time, the victim's mother and sister had become aware about she chatting with somebody. They had even threatened to kill her for doing so. Thereafter, on 24.06.2023 the victim and the

accused married each other in a Hanuman Temple near Andheri Market. However, the victim did not inform her family members about the same. On 18.07.2023, the victim met the accused as it was his birthday, and they went to Versova Beach. As the victim did not want to return home, she asked the accused to take her with him. Initially, the accused refused to do so as the victim has not completed 18 years of age. At this, the victim threatened to do something to herself due to which the accused took her with him to Mumbai Central and from there they took a train to Delhi where they started residing as a couple in tenanted premises. Thereafter, as the family members of the accused informed them about the victim's family having approached the police on account of she having gone missing, she and the accused came back to Mumbai.

4. As the victim was prima-facie a minor, the accused came to be arrested for the offences of having kidnapped her and of repeatedly subjecting her to rape. He was, therefore, arrested for the said offences under the IPC and under the POCSO Act. The statement of the family members of the victim then came to be recorded, after which the victim's school leaving certificate and bonafide certificate were also obtained. She was also sent before the learned Metropolitan Magistrate for recording her statement under Section 164 of the Cr.P.C. The victim was then sent for her detailed medical examination. She however, refused her consent for the same. At the same time, the accused came to be medically examined in detail. Thereafter, the charge-sheet in the matter came to be filed.

5. In the course of the application for bail, the Advocate for the accused has emphasized the fact that the victim and the accused had been in love with each other and of she having willingly accompanied him, even though he had asked her to wait till she attained the age of 18 years. Further, stating that the accused was not aware about the victim's age, and that both had subsequently married and were living together, he is seeking his release on bail. This is because the victim being 16 years old, she as per the Advocate for the accused, understood the consequences of her actions. Hence, placing reliance upon various rulings and pointing out that the accused does not suffer from any criminal antecedents and will abide all the terms and conditions which may be imposed upon him, it has been argued that this is a fit case for grant of bail.

6. The Investigating Officer filed his reply (Exh. 11). After stating the facts of the matter in detail, he has sought rejection of the application by pointing out that the accused is shown to have been involved in very serious offences. Hence, pointing out that the statements of some witnesses had yet to be recorded, that there is every possibility of the accused threatening the informant and absconding if released, he has sought the rejection of the said application.

7. The victim herself also filed her say (Exh. 12). Therein she has pointed out that she was 16 years old and that the accused had made her elope with him, after which he had repeatedly subjected her to sexual relations. Thereafter, she expressed her strong objection for releasing the accused on bail and sought the rejection of the said relief.

8. The learned APP has also made his submissions vide Exh. 15. Stating that the offences are serious and non-bailable in nature, that the victim was only 16 years old, that the accused will misuse the liberty of bail and will repeat the offence and abscond, if released, he is seeking the rejection of the application.

9. Heard the Advocate for the accused. In the course of his argument, he has repeatedly referred to a transcript of the conversation of which a pen drive has been submitted. According to him, the transcript will clearly show that the victim had herself accompanied the accused and had then willingly married him as she was sick and tired of the way in which she was being ill-treated by her mother and sister. Thereafter stating that no force, threats or coercion had, at any point of time, been used by the accused upon the victim for subjecting her to physical relations, he is seeking the release of his client on bail. In support of his arguments, the Advocate for the accused has placed reliance on the following rulings :-

1) Umesh Jalindar Ghadage Vs The State of Maharashtra & Anr. in Bail Application No. 4450/2021, the Hon'ble High Court of Judicature at Bombay, dated 15th February, 2023.

2) Vikas Bhaurao Rokade Vs The State of Maharashtra in Bail Application No. 2209 of 2021, the Hon'ble High Court of Judicature at Bombay, dated 25th November, 2021.

3) Kamil Farooque Pradhan Vs State of Maharashtra in Bail Application No. 3555 of 2019, the Hon'ble High Court of Judicature at Bombay, dated 29th January, 2021.

4) State of Karnataka by Nonavinakere Police Vs Shivanna @ Tarkari Shivanna, the Hon'ble Supreme Court of India, dated 25th

April, 2014.

5) Akshay Sugraiv Mane Vs The State of Maharashtra in Bail Application No. 2215 of 2022, the Hon'ble High Court of Judicature at Bombay, dated 23rd January, 2023.

6) Vishal @ Raju Ananda Asnekar Vs The State of Maharashtra & Anr. in Bail Application No. 3874 of 2021, the Hon'ble High Court of Judicature at Bombay, dated 02nd May, 2022.

7) Vikrant Sheshmani Gautam Vs The State of Maharashtra in Criminal Bail Application No. 1687 of 2020, the Hon'ble High Court of Judicature at Bombay, dated 22nd February, 2021.

8) Imran Iqbal Shaikh Vs The State of Maharashtra and anr. in Bail Application No. 997 of 2022, the Hon'ble High Court of Judicature at Bombay, dated 26th April, 2023.

9) Bhiraj Mulji Gohil Vs State of Maharashtra in Criminal Application No. 238 of 2008, the Hon'ble High Court of Judicature at Bombay, dated 18th February, 2008.

10) Amol Motiram Borde Vs The State of Maharashtra in Bail Application No. 1270 of 2021, the Hon'ble High Court of Judicature at Bombay, dated 30th March, 2021.

10. On the other hand, the learned APP has pointed out that the victim being 16 years old, it was for the accused to have refrained from establishing any kind of physical relations with her as he certainly knew the consequences of what he was doing. Therefore, pointing out that there is a possibility of the accused repeating the offence and absconding, if released, he has sought the rejection of the application.

11. Prima-facie, the charge-sheet in the matter having been filed, it is clear that the investigation in the said crime is complete. A perusal of the victim's statement as available in the said charge-sheet will indicate that she had willingly established a friendship with the accused, had pursued him by giving him a proposal of marriage, at which the accused had stated that he would marry her after she attained the age of 18 years. The victim's statement will also indicate that she had secretly got married to the accused on 24.06.2023 after which she had gone to celebrate his birthday on 18.07.2023 and then refused to return home. This had resulted in the accused taking her to Delhi where they started residing as a couple. This statement as also the history as given by the victim to the doctor, where she refused her medico-legal examination will prima-facie show that no force, threats or coercion had been used upon her by the accused for establishing physical relations with her. On the other hand, it appears that it was the victim, who played an active role in pursuing the accused, after which she had married him and then accompanied him to Delhi where she started residing with him. The said victim being 16 years old, it can certainly be said that she understood the consequences of what she was doing.

12. Though the consent of such a minor girl does not have any legal effect, it will have to be noted that presently, I am only considering the application for bail and not deciding the matter on merit. In such circumstances, I am of the opinion that considering the facts of the case and ratio of the judgments relied upon by the Advocate for the accused, he i.e. the accused can be said to have made out a case for grant of bail. This is all the more so as though the offences for which

the accused has been charge-sheeted carry a severe punishment and can be categorized as heinous offences, the facts of the matter as stated herein above will clearly show that there would not be any danger to the life of the victim, if the accused is released. Appropriate conditions can also be imposed upon the accused to prevent him from absconding. Not only this, but it cannot be ignored that the accused has also not been shown to suffer from any criminal antecedents. I, therefore, proceed to pass the following order :-

ORDER

- 1) Bail Application Exhibit-10 stands allowed.
- 2) The accused Chandramohan Bhagwan Jha who is arrested in Crime No.445/2023 registered by D.N. Nagar Police Station for the offences punishable u/s. 363, 376, 376 (2)(n) of Indian Penal Code, 1860 and u/s. 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 is released on bail on executing P.R. Bond of Rs.20,000/- with one or two solvent sureties of the like amount on the following conditions :
 - a) That he shall not attempt to contact the victim's family members or try to influence or threaten them by any means.
 - b) The accused shall provide his registered address in Mumbai, if any and proof of his native place and relevant contact numbers to the concerned police station.
 - c) He shall also submit the documents of three of his blood relatives reflecting their proper addresses and contact numbers to the concerned police station.

d) He shall attend the Court regularly on the fixed date and shall not remain absent unless exempted by the Court.

e) The Jail authority is directed to get the medical test of the accused done to see as to whether he is suspected of having COVID-19 virus.

Sd/-

Date : 26.09.2023

(S. J. Ansari)
Special Judge under P.O.C.S.O. Act,
Sessions Court, Borivali Division,
Dindoshi, Goregaon, Mumbai

Dictated on : 26.09.2023
Transcribed on : 26.09.2023
Checked and corrected on : 29.09.2023
Signed on : 29.09.2023
Sent to Dept. on :

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

UPLOAD DATE
AND TIME : 29/09/2023 at 3.54 p.m.

Mrs. S.B. Vichare
NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Ms. S. J. ANSARI (Court Room No.11)
Date of Pronouncement of Judgment/Order	26/09/2023
Judgment/Order signed by P.O. on	29/09/2023
Judgment/Order uploaded on	29/09/2023