

MHCC020113942020



**IN THE SPECIAL COURT FOR PROTECTION OF CHILDREN FROM
SEXUAL OFFENCES ACT, 2012 AT FORT, GREATER BOMBAY.**

**ORDER BELOW EXHIBIT-11
IN
POCSO SPECIAL CASE NO.985 OF 2020**

Nahendra Mahendra Makawana @ Nanu] Applicant/Accused.
Aged: 27 years.]

V/s.

The State of Maharashtra] Respondent.
(At the instance of Dongri Police Station,]
Mumbai, vide C.R. No.135/2020.)]

Mr. Prem Kumar R. Pandey, Advocate for Applicant/Accused.

Mrs. Sulbha Joshi, Spl. PP. for the Respondent/State.

**CORAM : H.H. The Addl. Sessions Judge
Mrs. M.A. Baraliya
The Designated Judge under
Protection of Children from
Sexual Offences Act, 2012.**

CR NO. : 15

DATED : 26th March, 2021.

ORAL ORDER

This third bail application is taken out by the above named applicant/accused under Section 439 of the Code of Criminal Procedure (hereinafter referred as 'Cr.PC.') to enlarge him on bail.

Dongri Police Station, Mumbai, has arrested the accused in Crime No.135/2020 for the charges punishable under Section 376 of the Indian Penal Code (hereinafter referred as 'IPC') and under Sections 4, 6, 8 and 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred as 'POCSO Act'). Since the date of arrest i.e. 03.10.2020, accused has been lying in the Judicial Custody.

2. In short, the case of prosecution is that the prosecutrix, 17 years old girl and accused, both were knowing each other being residents of same area for some period. Accused would visit her home with his daughter. In those visits, they came too close with each other and became physical in one lodge and frequently at her home. Accused would promise to marry her. According to prosecution, accused is also involved in drugs. Prosecutrix without knowledge of accused would consume the drugs which would be in his pockets. Her mother convinced and reprimanded her for not consuming the drugs, but she didn't listen to her mother. Often there would be argument and quarrel between prosecutrix and her mother. So her mother sent her to Rehabilitation Centre. Her mother returned to Mumbai on 21.09.2020 from Goa. Prosecutrix being scared that her mother would again send her to Rehabilitation Centre, left Mumbai and went to Lucknow to her grandparents. In between, her mother lodged her missing report. She returned to Mumbai on 28.09.2020. On 29.09.2020, she again left her home without intimating her mother. She met with the accused. Then she went with him to his job place and later on, visited his house. Accused then dropped her at J.J. Junction at around 11.00 p.m. She there met with her mother and police. Her statement came to be recorded.

3. Learned Advocate appearing for the applicant/accused has submitted that his second bail application was rejected. The concerned Advocate was not having, with him, the evidence which is in favour of accused, at the time of making submission, for second bail application. He has submitted that the prosecutrix herself sent her video thereby making allegations against her mother and step-father that both are forcing her to make a false case against the present accused. Ld. Advocate has provided the said video in one pen-drive. He has submitted that the said video is not available in the mobile of the accused, but the accused had forwarded the said video to his friends. So, he has produced for my perusal the mobile to which the accused has forwarded the said video. He has submitted that he forwarded the said video on dated 18.09.2020.

4. Contrary, learned SPP has strong objection to release the accused on bail as according to her, he is responsible to make the girl drug addict. She has also submitted that number of cases are pending against the accused who is habitual in drug cases. According to her, accused is involved in serious crime and he may repeat such crime again, if released on bail.

5. The video which is transferred to the pen-drive shows that the victim girl made a statement against her mother and step-father. She has stated in the said statement that her step-father used to harass her, but her mother doesn't believe her. Her mother makes her to consume drugs. They also forced her to harass the accused. Her parents also harass her. It is also seen that the victim girl had made the said video and sent it to the mobile of accused much prior before

lodging the report on dt. 02.10.2020. The evidence which was earlier not available with the defence shows that there is a change in the circumstances in bringing the evidence, which was though available, but the defence couldn't produce it on record. So, to me, the video wherein the victim is seen pleading, so many things against her mother and step-father and saying that her parents are forcing her to frame the accused anyhow, to me, such evidence produced at the subsequent stage can be a ground to release the accused.

6. During this pandemic period, it is not possible to take up the matter for trial and dispose it of expeditiously. So, it is just and proper to release the accused on bail. Hence, the following order:

ORDER

- (1) POCSO Bail application at Exhibit-11 is allowed.
- (2) Applicant/Accused Nahendra Mahendra Makawana @ Nanu be released on bail on furnishing P.R. Bond of Rs.25,000/- (Rupees Twenty-five Thousand only) with one or more sureties, in Crime No.135/2020 of the Dongri Police Station for the offences punishable under Section 376 of the Indian Penal Code and under Sections 4, 6, 8 and 10 of the Protection of Children from Sexual Offences Act, 2012, on following conditions :-
 - (i) The applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any Police Officer or tamper with the evidence.
 - (ii) The applicant/accused shall not commit an offence similar to the offence of which he is accused.

- (iii) The applicant/accused **shall not stay or reside or enter** in the area where prosecutrix resides and **shall not contact the prosecutrix and the witnesses, directly or indirectly, in any manner or by any means.**
- (iv) The applicant/accused shall not leave the jurisdiction of the Court and shall attend the Court on each and every date of the trial.
- (v) Applicant/accused is directed to attend the police station Dongri once in a month i.e. on last Sunday in between 11.00 a.m. to 12 noon till next order.
- (3) **After his release from jail, accused shall quarantine himself in the house for 14 days.**
- (4) If the accused has no surety for his release, he is at liberty to furnish the PR Bond and cash security of Rs25,000/- temporarily for the period of eight weeks on a condition that he shall furnish his mobile number, residential address, permanent as well as local alongwith residential address with proof of the same of two blood relations or close friends.
- (5) Application stands disposed of accordingly.
Authenticated copy of the operative order be given to the learned Advocate for accused.



26.03.2021.

(M.A. BARALIYA)
Designated Judge under
Protection of Children from
Sexual Offences Act, 2012,
for Gr. Bombay.

Dictated on : 26.03.2021
 Transcribed on : 26.03.2021
 Signed by HHJ on : 26.03.2021

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”		
UPLOAD DATE	TIME	NAME OF STENOGRAPHER
26.03.2021	02.13 p.m.	Bharat Kashinath Gaikwad
Name of the Judge		HHJ Mrs. M.A. Baraliya (CR No.15)
Date of Pronouncement of Judgment/ Order.		26.03.2021
Judgment/order signed by P.O. on		26.03.2021
Judgment/order uploaded on		26.03.2021