

IN THE COURT OF SESSION AT GREATER BOMBAY

BAIL APPLICATION EXHIBIT NO. 5

IN

SESSIONS CASE NO. 2051 OF 2019

(CNR No. MHCC02-018892-2019)

IDENTITY OF ACCUSED PROTECTED)
Aged about 25 years, of Bombay,)
Adult, Indian Inhabitant,)
IDENTITY OF ACCUSED PROTECTED)
IDENTITY OF ACCUSED PROTECTED)
IDENTITY OF ACCUSED PROTECTED)
IDENTITY OF ACCUSED PROTECTED) ... Applicant / Accused

Versus

The State of Maharashtra)
(Through Santacruz Police Stn.)) ... Respondent

Ld. Adv. Yash Vyas for Applicant/Accused.

Ld. APP Kalpana Hire for State / Respondent.

**CORAM : HER HONOUR THE ADDITIONAL SESSIONS
JUDGE SMT. SANJASHREE J. GHARAT
(C.R. NO. 39)**

DATED : 19.01.2021.

ORDER

This is an application for bail u/s. 439 of Cr.P.C. in C.R. No. 330 of 2009 registered with Santacruz Police Station for the offence punishable u/s. 376 of I.P.C.

2. As per prosecution story the victim is the daughter of the complainant aged 19 years. She is deaf and dumb and going to the School available for the Special Child and studying in the 7th standard. It is alleged that on 23.07.2019 the husband of the complainant

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received the phone call from the Teacher of the Victim girl. The teacher informed that the victim is having pain in her stomach and therefore asked the husband of the complainant to take the victim to the Hospital. Therefore the complainant took the victim to Dr. Ganesh Nivdunge. After clinical examination the Doctor advised Sonography Test. Therefore the Sonography Test of the victim was done. On basis of the Sonography Report the Medical Officer opined that the victim is pregnant. Therefore complainant made inquiry with the victim. It is alleged that though the victim is deaf and dumb the family members understand the sign language of the victim. Therefore when the said fact is confronted to the victim she disclosed that Applicant committed peno vaginal intercourse with her on two occasions by taking her nude photographs while she was returning from bathroom. Therefore the complainant reported the matter to the police.

3. The Applicant / Accused claims bail on the ground that he is falsely implicated in the present offence. It is submitted on behalf of the Applicant that the previous bail application came to be rejected as investigation was in progress. Being aggrieved by the said order the Applicant approached the Hon'ble High Court by filing Bail Application bearing No. 364/2019. During said period the DNA Report is received. Therefore the criminal Bail Application filed by the Applicant before the Hon'ble High Court is withdrawn with liberty to approach this Court for change in circumstances. The said Application is allowed with liberty to file Bail Application for above referred change in circumstances. The Applicant / Accused claims that as per the DNA Report produced on record the Applicant is excluded to be a biological father of the male child born to **IDENTITY OF VICTIM PROTECTED** Therefore it is submitted that the Applicant has no role to play in commission of offence and he is falsely

implicated. The Applicant further submitted that he is ready to abide the conditions imposed by the Court and prayed for release him on bail.

4. The Prosecution has raised objection to grant bail by filing Say. It is submitted on behalf of the prosecution that the Applicant / Accused took disadvantage of the fact that victim is deaf and dumb. He took the naked photographs of the victim and forcibly committed sexual intercourse with her and made her pregnant. Therefore if the Accused is granted bail, then there will be every possibility that Accused will tamper with the prosecution evidence. So also there is every possibility that he will threaten the victim and prosecution witnesses. Therefore, the prosecution strongly objected for release of Accused on bail.

5. After going through the Prosecution case and argument advanced it appears that the previous bail application filed by the Applicant came to be rejected. The present bail application is filed due to the change in circumstances after receipt of the DNA Report. It is alleged by the complainant that after knowledge of the pregnancy of the victim the said fact was confronted to her. At that time the victim disclosed the incident alongwith the name of Accused with sign language. The statement of victim is also recorded u/s. 164 of Cr.P.C. It is submitted on behalf of the prosecution that on said statement the victim in her handwriting written the name of Applicant. On perusal of the Charge-sheet it appears that the Accused was not pointed out to the victim girl for identification during course of investigation. The DNA Report is produced on record. As per the DNA Report 'the Applicant is, excluded to be the biological father of male child of **IDENTITY OF VICTIM PROTECTED** victim.' Therefore the said DNA Report negatives the prosecution case that it is the Accused who committed sexual intercourse with the victim

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and made her pregnant. The Accused is arrested in the present offence on 01.08.2019. The Accused is in custody for last 17 months. The charge-sheet is filed. It will take time to decide the matter on merit. Looking into the copy of DNA Report produced on record by the Applicant the prayer made by the Applicant for release on bail needs to be allowed. Therefore, I proceed to pass following Order :-

ORDER

1. The Bail Application Exh. 05 is hereby allowed.
2. The Accused be released on his executing P. B. and S. B. of Rs. 30,000/ with one or more solvent sureties in the like amount.
3. Provisional cash bail of Rs. 30,000/- is allowed for eight weeks.
4. The accused is further directed not to contact the victim in any manner or visit her at the place where she is residing.
5. The accused to attend the matter on each and every date without fail.
6. The applicant shall submit the proof of his residential address, phone number, Aadhar Card and Election Card, if any.
7. The Bail Application stands disposed off.

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8. Authenticated copy of this order be supplied.

(SANJASHREE J. GHARAT)
Additional Sessions Judge,
City Civil & Sessions Court,
Greater Bombay.

Date :- 19.01.2021.

Dictation Typed on : 19.01.2021.

Checked & Signed on : 21.01.2021.

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”	
21.01.2021 at 11.50 am UPLOAD DATE AND TIME	(Y.M. SAKHARKAR) NAME OF STENOGRAPHER
Name of the Judge (With Court room no.)	SMT. SANJASHREE J. GHARAT (C.R. NO. 39)
Date of Pronouncement of JUDGMENT/ ORDER	19.01.2021
JUDGMENT/ORDER signed by P.O. on	21.01.2021
JUDGMENT/ORDER uploaded on	21.01.2021