

**Order Below Exh.1 in Cri. B. A. No. 106/2022**  
(CNR No. MHNS010002842022)

Abdul Hussen Shaikh Vs. State.

**Heard** :Learned Adv. Ms. U. V. Mundada for the applicant.  
Learned A.P.P. Ms. S. S. Sangle for the State.

1. This is an application under Section 439 of the Code of Criminal Procedure in Crime No.5/2022 registered at Police Station, Upnagar, Nashik for the offence punishable under Section 354(a) of the Indian Penal Code, 1860 and Section 8 & 12 of the Protection of Children From Sexual Offences Act, 2012. It is the case of prosecution in brief that the 40 year-old accused/ applicant works as a watchman in the residential society of the 5 year-old victim. On the date of the incident, he lured her with a chocolate and inserted his hand in her pantie and tickled her, thereby sexually assaulting and violating her.
2. Learned Advocate for the applicant has submitted that the FIR is false and is filed due to the applicant's dispute with the victim's mother. The applicant has been working as a watchman since the past several years in the said society and there have been no allegations against him of this nature in the past. There were other people with the victim and therefore, it is not probable that he would have dared to commit such an offence. The applicant has been behind bars for almost one month and he should be released on bail.
3. Per contra, Ld. A.P.P. has vehemently opposed the application on the ground that there is *prima-facie* case against the applicant. Investigation is at nascent stage. There is no

reason for the complainant to lodge a false FIR. There was no family dispute between the applicant and the victim's family and no family would concoct such a case. Merely because there has been no prior complaint against the applicant, does not mean that he cannot commit such an offence. Victim is merely 5 years old. Investigation is in progress and charge-sheet is yet to be filed. If he is released on bail, there is every possibility of his tampering with and threatening prosecution witnesses.

4. Perusal of the record indicates *prima-facie* case against the applicant. Offence is serious in nature wherein a five year-old child has been sexually assaulted and violated by the accused who is 40 years old and **is a watchman of a residential society**. Absence of registration of past offences of similar nature is not an indication of the case being false. There is nothing on record to indicate either any animosity between the parties or to indicate the concoction of a false story regarding a 5 year-old child. Investigation is in progress and charge-sheet is yet to be filed. If the applicant is released on bail, there are chances of his tampering with prosecution witnesses and even committing similar offences with other children. In view of the foregoing discussion, I am inclined to reject the application.

**ORDER**

Application is hereby rejected.

Order is dictated & pronounced in open court.

Nashik  
21/02/2022

Mridula Bhatia  
District Judge-2 and  
Addl. Sessions Judge Nashik.