

Cri. Bail Appln. No.1243/2022  
Shabir Khan Vs. The State  
CNR No.MHNS010053242022

**ORDER BELOW EXH.1**

1. Perused application and say. Heard ld. advocate for the applicant, ld. APP for the State and the informant.

2. The present application has been filed by the applicant/accused Shabir Lakhpati Khan (Hereinafter referred to as 'the applicant' for the sake of brevity) for bail under Section 439 Cr.P.C. in C.R.No.110/2022 of Wadiwarhe Police Station. He has been charged with the offences punishable under Sections 376(2)(l)(n), 376(3) of the Indian Penal Code, 1860 and under Section 6 of the Protection of Children from Sexual Offences Act, 2012.

3. It has been contended on his behalf that the applicant has not committed any offence and he has been falsely implicated. The applicant was the informant's immediate neighbour. However, during the time of alleged incidents, he had gone to his native place for about six months. There are no eye witnesses to the alleged incidents. The applicant is only 22 years old. If he remains in jail, his future will be adversely affected. The investigation is over. The applicant has cooperated with the Investigating Officer. His further custody is not required. If released, he will abide by all the conditions imposed by the Court. It is prayed that the applicant may be released on bail.

4. The say of the I.O., ld. APP and the informant was called for. The I.O. has filed his say at Exh.4. Ld. APP has adopted the same vide the pursis at Exh.3. They have opposed the bail application on the ground that the offence is very serious in nature. The applicant has sexually assaulted a visually impaired girl. If released, the applicant may threaten or pressurise the victim or her relatives. He may tamper with the evidence. He is originally a residence of Uttar Pradesh. He may abscond. They prayed that the application may be rejected.

5. The informant has filed her say at Exh.5. She has opposed the application on the ground that the victim is scared of the applicant. If released, he may again trouble her. She has prayed that the application may be rejected.

6. Ld. advocate for the applicant argued that the applicant is in jail since August 2022. He was at his native place for a period of 6 months at relevant time. The prosecution has not brought any evidence on record to show that the applicant was present on the spot of the incident. The CDR or SDR have not been produced on record. There is no document on record to show that the victim's age. There are no eye witnesses to the incident inspite of the fact that the victim and the accused used to live in a chawl containing 110 rooms. He submitted that the applicant has been falsely implicated. He may be released on bail.

7. Ld. APP argued that the victim has clearly named the applicant in her statement. There is no reason for her to falsely implicate

the applicant. The victim and the applicant were neighbours. She knew him well and has named him in her statement. Her statement has to be relied upon. If released, the applicant may threaten or induce the victim or her family members. He may not be released on bail.

8. The informant was present before the Court. She strongly opposed the bail application on the ground that the applicant may threaten or pressurise her or the victim and her family members. She prayed that the application may be rejected.

9. The FIR discloses that the informant got a call from the victim's school as the victim was not feeling well. When the victim who is visually impaired was taken to the hospital, it was revealed that she was pregnant. When she was taken into the confidence, she revealed that the applicant had sexually assaulted her many times. Admittedly, the applicant was her neighbour. Therefore, she knew him well. There is nothing on record to disclose any reason for false implication. The offence was committed taking advantage of the fact that she is visually impaired and was alone in the house at the relevant time. The informant has clearly stated in her say that she apprehends a threat to herself, the victim and their family members from the applicant. Considering the facts and circumstances of the case and the fact that the applicant is the victim's neighbour, there is every possibility that he may threaten, pressurize the victim or other witnesses. It would not be appropriate to release the applicant on bail.

10. Ld. advocate for the applicant submitted that the prosecution

has not brought any material on record to show that the applicant was present at the spot at relevant time. He submitted that the applicant had gone to his native place for 6 months. He further submitted that the prosecution has not produced any document on record to show the victim's age. There are no eye witnesses to the case. On the above grounds, he prayed for bail. However, it is a settled position of the law that while deciding bail applications the Court has to only consider if a prima facie case is made out. The Court is not required to embark on an exhaustive exploration of the merits of the case. In *Niranjansingh and another Vs. Prabhakar Rajaram Kharote and others*, AIR 1980 SC 785, the Hon'ble Apex Court has held that :-

“Detailed examination of the evidence and elaborate documentation of merits should be avoided while passing orders on bail application. No party should have the impression that his case has been prejudiced”.

11. Therefore, at this stage it would not be appropriate to consider weigh and discuss the evidentiary value of the statements of the witnesses or the circumstances on record.

12. In *Gurcharan Singh and others Vs. State (Delhi Administration)* AIR, 1978 SC 179, the Hon'ble Apex Court had laid down the considerations while deciding the bail applications which are; the nature and the gravity of the offence, the position and status of the accused with reference to the victim and the witnesses. The likelihood of the accused fleeing from justice or repeating the offence, the history of

the case etc. In the present case, admittedly, the applicant is the victim's neighbour. There is every possibility that the applicant may threaten or pressurize the victim, the informant or their family members. Admittedly, the applicant hails from Uttar Pradesh. If released, he may abscond. Therefore, in the given facts and circumstances, the applicant ought not to be released on bail. Ld. advocate for the applicant has relied on Bhimrao Manikrao Dhole Vs. The State of Maharashtra, LAWS(BOM)-2020-6-168. However, the facts of the above authority are materially different from the present case. Therefore, with utmost respect to the Hon'ble Bombay High Court, this authority cannot be applied to the present case. Considering the above, I proceed to pass the following order :-

**ORDER**

The application stands rejected.

(Dictated and pronounced in open Court)

Date : 28/12/2022  
Place: Nashik

(S.N.Bhalerao)  
Special Judge, Nashik