

Order Below Exh.1 in Cri. B. A. No.208/2022

(CNR No. MHNS010006012022)

Motiram Anil Gaikwad Vs. State.

Heard :Learned Adv. Mr. P. S. Bhalerao 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.537/2021 registered at Police Station, Vani Dist. Nashik for the offence punishable under Section 354 & 452 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 accused/applicant is a family friend of the complainant. On the date of the incident, when the 5 year old daughter of the complainant was sleeping in her house, the applicant went to her and lowered down his pants till his knees and leaned on her.
2. Learned Advocate for the applicant has submitted that it cannot be ruled out that the FIR is false and is filed due to a family dispute. It is not believable that such an offence can be committed by a family friend. No purpose will be served by keeping the applicant behind bars. He is the sole bread-winner of his family. Investigation is over and charge-sheet is about to be filed. There are many contradictions in the statements of witnesses. In the FIR, it is mentioned that the applicant sat on the victim. However, the victim's mother has stated that when they returned, they saw the applicant sitting next to the victim. Therefore, the application should be allowed.
3. Per contra, Ld. A.P.P. has vehemently opposed the application on the ground that there is *prima-facie* case against the applicant. 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. Applicant resides in the same vicinity as the victim. If he is released on bail, there is every possibility of his tampering with and threatening prosecution witnesses. The victim was only 5 years old. There is no change in circumstance after the rejection of the previous bail application. The previous bail application was rejected by this Court. However, a perusal of the present bail application indicates that there is no mention of the previous bail application either in the pleadings or in the Declaration Form attached to the bail application. It clearly appears that the applicant has sought to suppress material information from the Court. Completion of investigation does not amount to change in circumstance.

4. Perusal of the copy of the charge-sheet indicates *prima-facie* case against the applicant. Victim is only five years old. Admittedly, applicant is a resident of the same locality as the victim. Therefore, apprehension of the Ld. A.P.P. that if the accused is released on bail, there are chances of his tampering with prosecution witnesses is well-founded. There is no change in circumstance after the previous bail application was rejected. If the applicant is released on bail, there are chances of his committing similar offences with other children and tampering with prosecution witnesses. 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
08/03/2022

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