

**Order Below Exh.1 in Cri.B.A.No.158/2022**

( CNR NO.MHNS010003802022 )

Mrs. Shabnam @ Samina Gaffor Momin Vs. State.

**Heard :** Ld. Adv. Mr. A. G. Sonawane for the applicant.

Ld. A.P.P. Ms. S. S. Sangle for the State.

I. O. present.

Perused the say of the complainant.

1. This is an application under section 439 of the Code of Criminal Procedure in Crime No.111/2021 registered at Police Station, Bhadrakali, Nashik for the offence punishable under Sections 509 & 506 of the Indian Penal Code, 1860 and Section 12 of the Protection of Children from Sexual Offences Act. It is the case of prosecution in brief that the applicant/accused (a lady) sent abusive and obscene messages to the complainant (also a lady) on her mobile phone. The said messages were read by the minor daughter of the complainant and hence the offence came to be registered.

2. Ld. Adv. for the applicant has submitted that the FIR is nothing but a gross misuse and abuse of the process of law. The factual matrix and background of the case is that the applicant/accused in this case was raped by the husband of the complainant. She therefore lodged an FIR against him due to which he was arrested and subsequently suspended and was also denied promotion as Dy.S.P. Therefore, the complainant and her husband have falsely implicated

her in many offences. The complainant's husband had threatened the applicant of implicating her in false cases. There is no whisper in the oral report that the complainant had informed the applicant that the said mobile is used by her daughter. Moreover, it is very easy to 'create' whatsapp messages. No offence under the POCSO Act is made out and that the provisions of the said act have been wrongly attracted to spite the complainant. Material part of the investigation is over. At the most, offences under the Information Technology Act have been made out against the applicant and all the sections areailable. No purpose will be served by keeping the applicant behind bars. The technical investigation can be carried out even when the applicant is on bail. Applicant is ready to abide by the terms and conditions imposed by the Court. She has a ten year-old son.

3. Per contra, Ld. A.P.P. has opposed the bail application on the ground that there is *prima-facie* case against the applicant. If the applicant is released on bail, there are chances of her tampering with prosecution witnesses. Moreover, 'touch' is not necessary to constitute an offence under the POCSO Act.

4. Material part of the investigation is over. The remaining technical investigation can be carried out even when the applicant is on bail. Considering the same and considering the peculiar facts and circumstances of the case, no purpose will be served by keeping the applicant behind bars. In view thereof, I am inclined to allow the application subject to the following terms and conditions.

**ORDER**

- 1] The application is hereby allowed.
- 2] Applicant Mrs. Shabnam @ Samina Gaffor Momin be released on bail by executing P.R. and S.B. of ₹15,000/- with one local surety of like amount.
- 3] Applicant shall not directly or indirectly, make any inducement, threat or promises to any person acquainted with the facts of accusation, so as to dissuade him/her from disclosing such facts to the Court or to the police officer and shall not tamper with the prosecution evidence in any manner.
- 4] Applicant shall not commit any offence.
- 5] Applicant is duty bound to inform the I.O. and the court about her change of address, if any.
- 6] Applicant shall furnish residence and ID proof of two blood relatives to the I. O.

Nashik  
11/02/2022

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