

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE SIDE**

**CRIMINAL BAIL APPLICATION NO. 1249 OF 2016**

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|----------------------|-----------------|
| Dilip Premji Ashar.  | ... Applicant.  |
| Versus               |                 |
| State of Maharashtra | ... Respondent. |

Ms. Meghna Gowalani, advocate appointed for applicant.

Mr. Arfan sait, APP for State.

Mr. Bharat T. Patil, PSI, Malad Police Station, Mumbai.

**CORAM : SMT. SADHANA S. JADHAV, J  
DATE : JANUARY 6, 2017.**

**P.C.**

1      Heard. This is an application through jail under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 2/2/2015 in Crime No. 54/15 registered at Malad Police Station. The investigation is completed and charge-sheet is filed against the applicant on 4/4/2015 for offence punishable under section 376 of the Indian Penal code.

2 It is the case of the prosecution that on 2/2/2015 Ms. X aged about 24 years lodged a report at the police station alleging therein that she had completed full-fledged course in hospitality management. Her friends had introduced her to a work recruitment agency. The applicant was working as recruiter in the said agency. She has alleged that he had expressed his love for her. That under the pretext of getting married to her, he had sexual intercourse with her on several occasions. That in January, 2015 she had disclosed to the applicant that she conceived pregnancy and at that stage, the applicant had immediately informed her that he has been tested for HIV positive. The first informant suspected that the said disease must have been transmitted to her also and therefore, she got herself examined at Nair Hospital where the doctor informed the applicant that she has been tested HIV positive. It is on the basis of this report Crime No. 54 of 2015 is registered.

3 The learned Counsel appointed for the applicant vehemently submits that it is apparent from the recitals of the FIR that there was consensual sex and therefore, it cannot be said that the applicant had ravished her against her wish.

4 The heinous part of the accused is that the applicant was fully aware that he is a subject of HIV positive and yet had suppressed the said fact from the informant and as soon as she has disclosed that she has conceived pregnancy, he had disclosed to her that he is HIV positive. The question is not only whether the offence under section 376 of the Indian Penal Code is made out but the applicant has been responsible for ruining the entire life and health of the first informant. In these circumstances, he would be liable for rigorous imprisonment for more than 10 years and therefore, this Court is not inclined to grant bail to the present applicant. It is also seen that only because an application for enlargement on bail is pending before the Sessions Court and thereafter in the High Court,

advocate representing the applicant before the Sessions Court was seeking adjournment at the stage of framing of charge. Needless to say that the Sessions Court shall proceed with the trial.

5 In the above circumstances, the application being sans merits stands dismissed and disposed of accordingly.

6 The learned Counsel appointed for the applicant has put in the best of the efforts to espouse the cause of the applicant. The professional fees are quantified at Rs. 1500/- to be paid to the learned Counsel within 3 months from today.

7 Office to send copy of this order to the applicant who is lodged in Thane Central Prison and also to the Sessions Court at Dindoshi.

**(SMT. SADHANA S. JADHAV, J)**