

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.310 OF 2022

Indal s/o Ramchandra Rathod **... APPLICANT**

VERSUS

The State of Maharashtra **... RESPONDENT**

.....
Mr. S.G. Nandedkar, Advocate for applicant
Mr. A.V. Deshmukh, A.P.P. for respondent – State
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CORAM : R. G. AVACHAT, J.

Date of reserving order : 28th July, 2022

Date of pronouncing order : 1st August, 2022

ORDER :

Heard. This is an application for bail under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.879/2021, registered at M.I.D.C. Waluj Police Station, District Aurangabad for the offences punishable under Sections 376(2)(J)(N), 370, 372, 373, 313, 465, 504, 506, 323 read with Section 34 of the Indian Penal Code, Sections 4 and 6 of the Protection of Children from Sexual Offences Act and Sections 9, 10 and 11 of the Child Marriage Act (Special Case (POCSO) No.64/2021 pending before the Special Judge

POCSO Act/ Additional Sessions Judge, Vaijapur, District Aurangabad).

2. The F.I.R. has been lodged by the victim herself on 27/8/2021 in respect of the offences that took place during the period from 5/5/2018 to 14/10/2020. The victim claimed to be 18 years of age when she lodged the F.I.R. It is her case that, she was residing along with her father (co-accused) and step mother and their two children at Ranjangaon. The applicant herein is her uncle. The applicant's wife is real sister of the informant's natural mother. Both the applicant and the informant's father would go for work in M.I.D.C. In July 2018, school admissions commenced. The informant requested her father and step mother to admit her in school. They, however, refused. They said they propose to give her in marriage. The informant was not agreeable. It has been further alleged that, the informant's father and applicant sold the informant to one Bhavna Chawla, resident of Rajkot, Gujarat for Rs.2,00,000/-. The said Bhavna Chawla claim to be an Advocate by profession. The informant stayed at her house for one month. There were two adult male in her house. Both of them committed sexual intercourse with the victim there. She suffered pains. Bhavna Chawla, therefore,

contacted the informant's father and sent her along with him to Aurangabad. The victim was medically treated at Aurangabad. Both, her father and step-mother harassed and ill-treated her.

3. It is further alleged in the F.I.R. that, thereafter father of victim took her to the house of Sandeep Mali at Nandurbar and then he left. She was made to stay at the house of Sandeep. He (Sandeep) told to have bought her for Rs.4 – 5 Lakhs. Family members of Sandeep would ill-treat her. Sandeep had sexual intercourse with the victim many a times. She thereby conceived. Sandeep, therefore, contacted her father. The father, in turn, brought her back to Aurangabad. She was subjected to medical termination of pregnancy. Her health deteriorated. Then on 20/12/2019, the father of informant and applicant performed victim's marriage with one Vithal Gaikwad, resident of Kolewadi Taluka Maan, District Satara. They prepared a false Adhar Card to show her to be major. Victim learnt to have sold to Vithal Gaikwad for Rs.2 Lakhs. She stayed at his house for 8 – 9 months. Vithal had sexual intercourse with her many a times. Vithal's mother Nandabai would harass and ill-treat her. The victim, therefore, contacted her maternal aunt (wife of the

applicant) and requested her to get her back lest she would commit suicide. Vithal Gaikwad himself brought her to Dahiwadi Police Station on 14/10/2020. Her mother and grandmother were present at the police station. They brought her back.

4. The crime came to be investigated. Charge sheet has been filed.

5. The learned counsel for the applicant would submit that, maternal aunt of the informant is the wife of the applicant. Relationship between the applicant and his wife were not cordial. There is matrimonial discord. The applicant had faced prosecution for the offence punishable under Section 498-A of the Indian Penal Code. His wife had also filed an application under Section 12 of the Protection of Women from Domestic Violence Act. According to him, the informant has named him in the F.I.R. only at the behest of his wife. The learned counsel would submit that, no overt role has been attributed to the applicant. According to him, the charge sheet has been filed. It will take time for commencement and conclusion of the trial. He, therefore, urged for allowing the application.

6. According to learned A.P.P., the offence is serious one and the bail application, therefore, deserves to be rejected.

7. Considered the submissions advanced. Perused the F.I.R. and related papers. The applicant herein is the uncle of the informant. Both the applicant and his brother (father of the informant) reside separately from each other. The wife of the applicant is the real sister of the informant's natural mother. There is matrimonial discord between the applicant and his wife. Both of them are not living together. The learned counsel for the applicant has every reason to contend that the applicant has been named in the F.I.R. at the behest of his wife. Close reading of the F.I.R. would indicate that the main allegations are against the father of the informant and others with whom the informant was forced to stay/ live. I do not propose to make any prima facie observations as regards veracity of the F.I.R. and other material collected during investigation since it may have bearing on bail applications of co-accused. Suffice it so say that, considering the role attributed to the applicant herein and the fact that on completion of the investigation the charge sheet has been filed, and it will take time for

commencement and conclusion of the trial, I am inclined to grant bail to the applicant. Hence the order :

ORDER

(i) The Bail Application is allowed.

(ii) The applicant be released on bail in connection with Crime No.879/2021, registered at M.I.D.C. Waluj Police Station, District Aurangabad for the offences punishable under Sections 376(2)(J)(N), 370, 372, 373, 313, 465, 504, 506, 323 read with Section 34 of the Indian Penal Code, Sections 4 and 6 of the Protection of Children from Sexual Offences Act and Sections 9, 10 and 11 of the Child Marriage Act (Special Case (POCSO) No.64/2021 pending before the Special Judge POCSO Act/ Additional Sessions Judge, Vaijapur, District Aurangabad) on his executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.

(iii) The applicant shall not tamper with the prosecution evidence.

**(R. G. AVACHAT)
JUDGE**

fmp/-