

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

BAIL APPLICATION NO. 857 OF 2022

Ambadas Maroti Ghandare

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. D.M. Shinde, Advocate for applicant
Mr. S.P. Sonpawale, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT, J.
DATE : 17th AUGUST, 2022**

PER COURT :

1. This is an application for bail under Section 439 of Code of Criminal Procedure. The applicant has been arrested in connection with Crime No. 322 of 2021 registered with Hatta Police Station, Dist. Hingoli for the offences punishable under Sections 376, 376(2)(n), 315 and 506 read with Section 34 of the Indian Penal Code.

2. Heard. Perused the First Information Report ("F.I.R.") and related police papers.

3. The F.I.R. has been lodged by the victim herself on 30th November, 2021. It is her case that she is the mother of two children. Due to

marital discord she has been residing at the house of her parents. The applicant has his land adjacent to the land of the informant. It is further her case that about four months before registration of the F.I.R., the applicant came drunk. It was night time. He had sexual intercourse with her against her wish and without her consent. Since the applicant had given threats to her life, she did not disclose the incident to anyone. He behaved with her similarly 3-4 days thereafter. As a result of same, she conceived. The applicant gave her pills of MTP (Medical Termination of Pregnancy), but vain. The informant requested the applicant to marry her. He refused. She, thereafter lodged the F.I.R. It is informed that the victim has delivered a baby.

4. Learned counsel for the applicant would submit that averments in the F.I.R. would indicate it to be a consensual relationship. He, therefore, urged for grant of application.

5. Learned A.P.P. would, on the other hand, submit that D.N.A. report indicates the applicant to be the biological father of the new born. He would further submit that due to threats extended by the applicant herein, the helpless victim could not disclose the incident immediately. According to him, it is a serious offence. He, therefore, urged for rejection of the application.

6. Considered the submissions advanced. It is true that D.N.A. report indicates the applicant to be the biological father of the baby delivered by the informant. The informant is major. The F.I.R. was lodged six months after the alleged sexual assault. Learned counsel for the applicant has, therefore, every reason to contend it to be a consensual relationship. On investigation, charge-sheet has been filed. It will take time for commencement and conclusion of trial. In the facts and circumstances of the case, it appears to be a case of consent.

7. In view of above, the Court inclined to grant the application. Hence I pass the following order :-

ORDER

(I) The bail application is allowed.

(II) The applicant be released, in connection with Crime No. 322 of 2021 registered with Hatta Police Station, Dist. Hingoli for the offences punishable under Sections 376, 376(2)(n), 315 and 506 read with Section 34 of the Indian Penal Code, on 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, J.)