

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

BAIL APPLICATION NO. 1685 OF 2022

Samadhan Dattu Gore

..Applicant

v/s.

The State of Maharashtra .

..Respondent

Mr. Tushar Sonawane for the Applicant.

Mr. Ashish Satpute for the Respondent No.2

Mrs. A.A.Takalkar, APP for the State.

CORAM : ANUJA PRABHUDESSAI, J.

DATED : 13th APRIL, 2023.

P.C.

1. This is an application under Section 439 Cr.P.C. filed by the aforesaid Applicant, who is facing trial in Special Case No.7 of 2021 pending before the learned Addl. Sessions Judge, Pandharpur. The said case arises from Crime No. 10 of 2022, registered with Sangola Police Station for the offences under Section 354, 506 of the Indian Penal Code and Section 4, 8, 12 and 42 of the Prevention of Children from Sexual Offences Act.

2. Heard learned Counsel for the Applicant, learned Counsel for the Respondent No.2 and learned APP for the State. I have perused the records and considered the submissions advanced by the learned

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Counsels for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by the mother-in-law of the victim. She has stated that on 04.01.2022 she had gone in search of the victim, who had gone to wash clothes near the rivulet (Odha). She saw the Applicant pulling the victim by her hand and heard the victim crying for help. She has stated that she had also heard the Applicant threatening her not to shout. When she intervened the Applicant left the victim and ran away from the spot. Based on the said report, initially crime was registered under Section 354, 506 of IPC and Section 12 of the POCSO Act. Statement of the victim was recorded. The victim claimed that the Applicant had touched her chest and private parts. On the basis of the allegations made by the victim, Section 4 and 8 also came to be added.

4. It is to be noted that though the Applicant is charged for committing offences under Section 4 of the POCSO Act, the statement of the victim does not prima facie indicate that the Applicant had committed penetrative sexual assault. In such circumstances, in my considered view, prima facie, the offence

under Section 4 of not made out.

5. The maximum sentence in respect of other offences is five years. The Applicant was arrested on 04.01.2022 and is presently in Judicial Custody. Considering the large pendency, the trial is not likely to commence in the near future. The application filed by the Applicant has been rejected mainly on the ground of antecedents of the Applicant. Learned Counsel for the Applicant states that the Applicant shall not visit Sangola District, Solapur, till the evidence of the victim is recorded.

6. Considering the above facts and circumstances, in my considered view, this would be a fit case, to exercise discretion under Section 439 of Cr.P.C. in favour of the Applicant. Hence the application is allowed on the following terms and conditions:-

(i) The Applicant who is facing trial in Special Case No.7 of 2021 pending before the learned Addl. Sessions Judge, Pandharpur arising out of Crime No. Crime No. 10 of 2022, registered with Sangola Police Station, be released on bail on furnishing bail bond

of Rs.25,000/- (Rupees Twentyfive Thousand Only) with one or two solvent sureties in the like amount;

(ii) The Applicant shall not visit Sangola District till the evidence of the victim is recorded.

(iii) The Applicant shall report to the nearest police station on the first Monday of every month till the date of framing of charge;

(iv) The Applicant shall not interfere with the complainant or the other witnesses, or tamper with the evidence in any manner;

(v) The Applicant shall keep the Special Court as well as the Investigating Officer informed of his permanent as well as temporary address, and his contact details, and/or change of residence or mobile details from time to time.

(ANUJA PRABHUDESSAI, J.)