

Nikita

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

BAIL APPLICATION NO.2930 OF 2022

Mahesh Dattu Barkade ... Applicant
V/s.
The State of Maharashtra ... Respondent

Mr. Ganesh Bhujbal, for the applicant.

Mr. N.B. Patil, APP for the respondent/State.

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CORAM : AMIT BORKAR, J.

DATED : AUGUST 10, 2023

P.C.:

1. This is an application under Section 439 of the Criminal Procedure Code, 1973 seeking bail in relation to C.R. No. 254 of 2022, registered with Indapur Police Station for the offences punishable u/s 376, 354, 354A, 354B, 354D, 452 and 506 of the Indian Penal Code, 1860.

2. The case of the prosecution in brief is that

On 15.04.2022, around 10.00 p.m. prosecutrix after having her dinner, saw that in the field adjacent to her house, belonging to one Dattu Anna Barkade, water was flowing from the pipeline in the field and she went to the field with buckets to fill water, while she was filling her buckets she saw the applicant watering his Sugarcane field and the prosecutrix filled two buckets of water and went to her house.

That, soon the prosecutrix returned to fill her third bucket and at that time accused came from behind caught her by her right hand and embraced her. She tried to shout but the applicant threatened her that she should not make any notice and not tell about this to anyone, or he will kill her.

That, the applicant allegedly, told her, he likes her and wanted to have sexual intercourse with her, and told her to take her bucket back home and return back to field, at this point he left her hand and she returned home.

After she returned home, she locked herself from inside and allegedly, the applicant followed her, and reached her house and started banging the front door and asked her to come out and the prosecutrix opened the door and told him to go away, but he forced himself inside the house and holding her hand, he took her to a door-less washroom, where he removed her Saree and forcibly had sexual intercourse with her.

That, soon they heard a motorcycle approaching from the backside of the house, the purported motor-cycle belonging to the husband of the prosecutrix. On seeing this the applicant wore his shirt and fled away from the house.

Thereafter, the prosecutrix narrated the entire incident to her husband and subsequently, the prosecutrix along with her husband and the child, reported the said incident to the Indapur Police Station, Pune on 16.04.2022.

3. Based on the First Information Report, the applicant was arrested on 16th April 2022. The investigating agency recorded

the statement of husband and other witnesses and after completion of investigation filed charge-sheet.

4. The applicant filed application under Section 439 of Code of Criminal Procedure, 1973, before the learned Sessions Judge, which came to be rejected by order dated 22nd July 2022, rejected the application.

5. I have carefully perused the charge-sheet and other material on record. It prima facie appears that after hearing the sound of informant's husband motorcycle, the applicant fled the spot of incident. She, therefore, told her husband about the incident. Item No. 9 of the medical report suggests the absence of forceful application, however the Trial Court needs to adjudicate upon this issue during trial.

6. The applicant is in Jail from 16th April 2022. The charges which are yet to be framed. Considering the pendency of matters in the Trial Court, it is unlikely the Trial Court will finish the trial in near future. The applicant has made out a case of release on bail under Section 439 of the Criminal Procedure Code, 1973.

- a) The bail application is allowed;
- b) The applicant be released on bail in relation to No.C.R. No. 254 of 2022, registered with Indapur Police Station for the offences punishable u/s 376, 354, 354A, 354B, 354D, 452 and 506 of the Indian Penal Code, 1860, on furnishing P.R. Bond in the amount of Rs.15,000/- along with one or two sureties in the like amount;

- c) The applicant shall mark his presence before the concerned police station on first Saturday of every month between 11.00 a.m. to 2.00 p.m.;
 - d) The applicant shall remain present before the Trial Court on each and every date unless specifically exempted by the Court;
 - e) The applicant shall not directly or indirectly make any inducement, threat or promise to victim or any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court;
 - f) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
 - g) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;
7. The bail application stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)