

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

CRIMINAL BAIL APPLICATION NO.3876 OF 2022

Sankesh Anant Kadam

....Applicant

Versus

The State of Maharashtra

....Respondent

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Mr. Anand Awasarmol, Advocate for the Applicant.

Ms. Pallavi Dabholkar, APP for the Respondent/State.

CORAM : G. A. SANAP, J.

DATE : 6th NOVEMBER, 2023.

P.C. :

1. The applicant/accused in Crime No.I-26/2022, registered with Kalwa Police Station, District Thane for the offences punishable under Sections 376, 506, 506(2) and 504 of the Indian Penal Code, 1860 (for short "IPC") and Section 92(d) of the Disabled Persons Right Act, 2016, has made this application for bail.

2. Learned advocate for the applicant/accused submitted that the applicant is in jail since January, 2022. Learned advocate submitted that the relationship between the accused and the

informant was consensual. Learned advocate submitted that the informant disclosed about the pregnancy after eight months of conception. Learned advocate submitted that on the pressure of the father, the informant has reported this matter to the police. Learned advocate submitted that considering the nature of relationship and the fact that the trial is not likely to get over in next few years, the accused may be released on bail. Learned advocate submitted that the accused is ready to abide by the conditions that may be imposed by this Court.

3. Learned APP submitted that the informant was put under constant pressure by the accused and by applying pressure and threat, she was subjected to sexual assault. Learned APP pointed out that the informant is the cousin sister of the accused. Learned APP submitted that the informant has begotten a female child. Learned APP further submitted that DNA report in the crime is awaited and therefore, the bail application may not be allowed. Learned APP further submitted that considering the dominant position of the accused, possibility of extending threat to the informant and the witnesses cannot be ruled out.

4. It is seen that in this case, the informant is major. It is the case of the accused that it was consensual act. As far as this aspect of consensual act is concerned, at this stage, Court cannot go into the merits of the case. It is seen on perusal of the record that the accused and the informant were in relationship almost for three years. It is seen that after premature delivery of the child, the matter was reported to the police. It is seen that the informant is the cousin sister of the accused. Their relationship has to be taken into consideration. It is seen on perusal of the record that for three years, the informant did not make any complaint to anybody.

5. The DNA report is awaited. Even if it is assumed that DNA report is positive against the accused, it may not stand in the way of the accused for the purpose of deciding his bail application, because in this case the informant is major. In the facts and circumstances, in my view, the accused cannot be made to suffer further incarceration. The chances of completion of trial in the near future are very bleak. The detention of the accused is not necessary for investigation or further interrogation. Learned APP submitted that the informant is a disabled person and therefore, the accused can take disadvantage of

the situation and threaten and pressurize her. In my view, on this ground, bail cannot be denied to the accused. The apprehension put forth by learned APP can be taken care of by imposing appropriate conditions. Hence, I pass following order:

ORDER

- (i) The application is **allowed**.
- (ii) Applicant – Sankesh Anant Kadam in connection with Crime No.I-26/2022, registered with Kalwa Police Station, District Thane, shall be released on bail on his furnishing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty Five Thousand Only) with one solvent surety in the like amount.
- (iii) The applicant shall not in any manner threaten or pressurize the prosecution witnesses.
- (iv) The applicant shall not directly or indirectly tamper with the prosecution evidence.
- (v) The applicant shall keep himself outside the limits of Gr. Mumbai and Thane till completion of trial, except for the purpose of attending the trial on the given date and that too with prior intimation to the Kalwa Police Station.

6. The application is disposed of accordingly.

(G. A. SANAP, J.)