

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

BAIL APPLICATION NO. 1576 OF 2024

Raj Babu Komrekar

.Applicant

Versus

The State of Maharashtra & Anr.

.Respondents

Mr. Chaitanya Dixit a/w. Mr. Dhananjay Bhosale, for Applicant.
Ms. Savita M. Yadav, APP, for Respondent No.1 – State.
Ms. Samruddhi Bendbhar, for Respondent No. 2.

**CORAM: MADHAV J. JAMDAR, J.
DATE: 08.05.2024**

P. C.

1. Heard Mr. Dixit, learned Counsel for the Applicant, Ms. Yadav, learned APP for Respondent No.1-State and Ms. Samruddhi Bendbhar, learned Counsel for Respondent No.2.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:

1.	C.R. No.	792 of 2023
2.	Date of registration of F.I.R.	23.11.2023
3.	Name of Police Station	Akluj, District - Solapur
4.	Sections invoked	363, 366A, 376, 376(2)(J)(N) r/w. 34 of the I.P.C., 1860 4, 8, 12 and 17 of the POCSO Act
5.	Date of incident	23.11.2023
6.	Date of arrest	06.12.2023
7.	Date of filing of Charge-sheet	23.01.2024

3. The prosecution case as set out in the F.I.R. and the statements

of various witnesses is as follows :-

(i) Both the families of the Applicant and the Victim by consent had decided that the Applicant would marry the Victim. Therefore, in fact, an engagement ceremony was held on or about 09.05.2023. It appears that in fact, the family of the Applicant had also reserved a hall for the purpose of wedding ceremony on 11.08.2023 for the proposed marriage to be performed on 22.12.2023.

(ii) The Applicant is from Pune and the Victim is from Akluj, District – Solapur. After the engagement ceremony, the Applicant used to visit Akluj to meet the Victim and at that time, the father of the Victim thought that the Applicant is under the influence of alcohol. Therefore, the father of the Victim enquired and came to know that the Applicant is a habitual alcoholic and that he is not employed. Therefore, the father of the Victim called the mother of the Victim and called off the said marriage.

(iii) As per the prosecution case, the F.I.R. was registered on 23.11.2023 under Section 363 of the *Indian Penal Code, 1860*, as the Victim had left for college at 9.00 a.m. and at about 11.30 a.m., a teacher from the college had called the father of the Victim and informed that the Victim had not attended the college. In the F.I.R., it is stated that at that time, the age of the Victim was 17 years, 8 months and 4 days.

(iv) Thereafter, on 05.12.2023, the Police found the Victim in a flat at Nashik. It appears that the family of the Applicant had performed

their marriage on 26.11.2023 in a temple. Thereafter, after 26.11.2023, both of them started residing at Nashik and the Police found them on 05.12.2023.

4. Mr. Dixit, learned Counsel for the Applicant pointed out WhatsApp messages (page Nos.299 to 301). On the basis of those messages, he submitted that in fact, the Victim had informed the Applicant that they should park the car outside the college and she would come there. He therefore submitted that the Victim had gone with the Applicant and other family members of the Applicant on her own. He submitted that the marriage was solemnised on 26.11.2023 in a temple. Thereafter, the Applicant and the Victim were residing at Nashik. He submitted that the relations were consensual and the Victim was happily residing with the Applicant for about 14 days when the Police apprehended the Applicant. He submitted that in fact, this is a case where the families of both the Applicant and the Victim had fixed the marriage and accordingly, an engagement ceremony were performed on 09.05.2023. He submitted that the father of the Victim unilaterally cancelled the marriage and the Victim wanted to get married with the Applicant and therefore, she came along with the Applicant and other family members. He submitted that the Applicant is presently 23 years old and at the relevant time, he was 22 years old. He submitted that there are no antecedents.

5. On the other hand, Ms. Yadav, learned APP for Respondent

No.1 and Ms. Bendbhar, learned Counsel appointed to represent the interest of Respondent No.2 vehemently opposed the Bail Application. On the basis of the Victim's statement recorded under Section 164 of the CrPC, both of them submitted that in fact, the Victim had been lured by the Applicant and his family members. It is submitted that the Applicant had sexually assaulted the Victim on the pretext that the marriage was performed between the Applicant and the Victim. Both of them further submitted that in fact, the Victim was forced to consume liquor and she was sexually assaulted. Both of them therefore, submitted that the Bail Application be rejected.

6. Ms. Bendbhar, learned Counsel relied on the decision dated 15.03.2023 passed in Criminal Appeal No.72 of 2023 by a Division Bench at Nagpur in the case of *Sheikh Adil Sheikh Harun v. State of Maharashtra & Anr.* by which the Appeal of the said Appellant was admitted against conviction *inter alia* for the offences punishable under the *Protection of Children from Sexual Offences Act, 2012* ("POCSO Act"), however, his Application for releasing on bail was dismissed. Ms. Bendbhar, learned Counsel more particularly relied on paragraph nos.9 and 13 of *Sheikh Adil Sheikh Harun* (Supra).

7. A perusal of the record shows that the incident in question have taken place between 23.11.2023 to 05.12.2023. The offence was registered on 23.11.2023. Initially, only the offence punishable under Section 363 of the IPC was registered and thereafter, other sections were invoked including the POCSO Act. The Applicant was

apprehended on 05.12.2023. The Charge-sheet was filed on 23.01.2024. As per the Charge-sheet, there are 12 witnesses proposed to be examined by the prosecution.

8. The Applicant is a young man aged 23 years and at the relevant time, the Applicant was 22 years old. The Victim was 17 years, 8 months and 4 days old.

9. This is a case where both families had fixed the marriage of the Applicant with the Victim. Therefore, an engagement ceremony was performed on 09.05.2023. Thereafter, the father of the Victim got the information that the Applicant is a habitual alcoholic and he is not employed. Therefore, he cancelled the marriage.

10. *Prima facie*, there is substance in the contention of Mr. Dixit, learned Counsel for the Applicant that the Victim had willingly gone with the Applicant and his family members to Pune on 23.11.2023.

11. Ms. Bendbhar, learned Counsel has relied on paragraph nos. 9 and 13 of *Sheikh Adil Sheikh Harun* (Supra), wherein it was observed that the victim was lured and trapped under the guise of showing love and she was taken away from the lawful guardianship. Therefore, the Bail Application filed in the Appeal was rejected. However, the factual position in the case of *Sheikh Adil Sheikh Harun* (Supra) is totally different. The said factual position is narrated in paragraphs 10 and 11 therein. It has been held that the Accused used to follow the victim while she was going to attend the college and the Accused, in fact, forced her to get acquainted with him. He had

threatened her. Therefore, the facts in *Sheikh Adil Sheikh Harun* (Supra) are different from the facts herein.

12. The trial is unlikely to conclude any time soon and is likely to take a considerably long time.

13. Mr. Dixit, learned Counsel for the Applicant states that as several witnesses are residing in the same locality as that of the Applicant, the Applicant will therefore not reside within District – Solapur and that the Applicant will stay at 101, Janvadi Janta Vasahat, Gokhale Nagar, Pune and will attend the Chaturshringi Police Station, Pune.

14. The Applicant does not appear to be at risk of flight.

15. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

16. In view thereof, the following order:-

ORDER

(a) The Applicant - Raj Babu Komrekar be released on bail in connection with C.R. No.792 of 2023 registered with the Akluj Police Station, District – Solapur on his furnishing P.R. Bond of Rs.50,000/- with one or two solvent sureties in the like amount.

(b) The Applicant shall not enter District – Solapur after being released on bail, except for reporting to the Investigating Officer, if called and for attending the trial.

(c) On being released on bail, the Applicant shall

furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.

(d) The Applicant shall report to the Chaturshringi Police Station, District – Pune once every week, on Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Chaturshringi Police Station, District – Pune to communicate details thereof to the Investigating Officer.

(e) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.

(f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.

(g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

17. The Bail Application is disposed of accordingly.

18. It is clarified that the Trial Court shall decide the case on its

merits, uninfluenced by the *prima facie* observations made in this order.

19. This Court places on record its appreciation of the assistance rendered by Ms. Samruddhi Bendbhar, learned Counsel appointed to represent the interest of Respondent No.2. The High Court Legal Services Committee, Mumbai to pay professional charges to Ms. Bendbhar as per rules and her name be included in the list maintained by the High Court Legal Services Committee, Mumbai.

[MADHAV J. JAMDAR, J.]