

Arjun

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

BAIL APPLICATION NO.528 OF 2023

Mr. Alok Jagdish Yadav

...Applicant

Versus

The State of Maharashtra

...Respondent

 Mr. Bhaskar Jha a/w Abhishek Dubey, for the Applicant.

 Mr. P. H. Gaikwad, APP, for the Respondent-State.

CORAM : MADHAV J. JAMDAR, J.

DATED : MARCH 07, 2024

P.C.:

- 1.** Heard Mr. Jha, learned Counsel for the Applicant and Mr. Gaikwad, learned APP for the Respondent-State.
- 2.** This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973* ("CrPC"). The relevant details are as follows:-

1	C. R. No.	402 of 2019
2	Date of registration of F.I.R.	26/03/2019
3	Name of Police Station	Tulinj Police Station Palghar district
4	Section/s invoked	363, 376-AB of the <i>I.P.C., 1860</i> ; 4, 8 & 12 of the <i>POCSO Act, 2012</i> .

5	Date of incident	25/03/2019
6	Date of arrest	27/03/2019
7	Date of filing Charge-sheet	27/05/2019

3. The victim was aged 5 years and 10 months when the incident in question took place. The F.I.R. was lodged by father of the victim.

4. As per the prosecution case, on 25th March 2019 at 5.30 p.m. the victim returned from her school and thereafter went outside for playing. However, even after two hours she did not return to her house and therefore her parents started to search for the victim and they came to know that one person had given her money for bringing a '*Gutkha*' packet. As the victim could not be located, the F.I.R. was lodged. The parents of the victim and family members were continuously searching the victim. Early in the morning of 26th March 2019, the victim was found with blood on her clothes. Thereafter, the victim narrated the whole incident and told her family members that one person gave her 12 Rupees to bring '*Gutkha*' and after that gave her 2 Rupees and thereafter took her to one seclude place and sexually assaulted her. The victim was only 5 years and 10 months old at the time of the offence in question.

5. As per the prosecution case, the victim has identified the Applicant in the Test Identification Parade. The medical evidence

shows that the findings are consistent with sexual assault as narrated by the victim and the medical evidence positively shows that the victim has been sexually assaulted. In the statement recorded under Section 164 of the CrPC, the victim has stated about the incident in question.

6. Learned Counsel for the Applicant submitted that there is no incriminating material against the Applicant and he is not involved in the offence in question. He submitted that except Test-Identification Parade there is no other incriminating material against the Applicant and that there was a delay of one and half month in conducting the Test-Identification Parade.

7. On the other hand, Mr. Gaikwad, learned APP submitted that this is a second Bail Application. The first Bail Application was dismissed as withdrawn and liberty was granted to prefer an Application for bail after the Forensic Science Laboratory Report was produced. The Forensic Science Laboratory Report shows that the D.N.A. from the blood stain cutting from the frock of the victim is identical to and matches with the D.N.A. of prepared blood stain of the victim. He therefore submitted that the Bail Application be rejected.

8. A perusal of the record shows that the offence in question is extremely heinous and grievous in nature. The victim was aged only 5 years and 10 months at the time of the incident. The victim

has identified the Applicant. In the statement recorded under Section 164 of the CrPC, the victim has narrated the manner in which the incident has occurred.

9. It is true that the Applicant was arrested on 27th March 2019 and even after a period of 5 years, there is no progress in the trial. However, in this case, the victim was aged only 5 years and 10 months at the time of the incident. Therefore, this is not a fit case for granting bail.

10. The learned Trial Court is requested to take effective steps to expedite and conclude the trial within a period of one year.

11. The Bail Application is rejected, subject to above.

[MADHAV J. JAMDAR, J.]