

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.4044 OF 2023**

Harekrishan Abhimanya Muduli

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. Sandeep Mishra i/by Mr. Anant Puthal, Advocates, for the Applicant.

Ms. Veera Shinde, APP, for Respondent- State.

Mr. Varad Kilor, for Respondent No.2.

API-Mr. Sopan Patil, Pelhar Police Station, present.

CORAM: MADHAV J. JAMDAR, J.

DATED: 18th April 2024

P. C.

1. Heard Mr. Mishra, learned Counsel for Applicant, Ms. Shinde, learned APP for Respondent-State and Mr. Kilor, learned Counsel appointed to represent the interests of 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.	562 of 2022
2.	Date of registration of F.I.R.	28 th June 2022
3.	Name of Police Station	Pelhar, District- Palghar
4.	Section/s invoked	376, 376(2)(N), 506 of <i>I.P.C.</i> , 1860; 4, 6 and 8 of <i>Protection of Children from Sexual Offences Act, 2012</i> .

5.	Date of incident	February 2022 to May 2022
6.	Date of arrest	28 th June 2022
7.	Date of filing of Charge-sheet	24 th August 2022

3. As per the prosecution case, on 26th June 2022, the victim who was about 17 years old, started experiencing severe abdominal pain and therefore she was taken to the hospital and in the sonography examination report, it was detected that she was 15 weeks pregnant. After enquiring with the victim, she informed her mother that the present Applicant had sexually assaulted her without her consent and that as she was given threats, she did not inform about the said sexual assault to her mother.

4. It is the contention of Mr. Mishra, learned Counsel for the Applicant that the F.I.R. was lodged on 28th June 2022, the Applicant was arrested on 28th June 2022, the Charge-sheet was filed on 24th August 2022 and therefore the investigation is completed. He submitted that the Applicant is not involved in the offence in question and therefore he be granted bail.

5. On the other hand, Ms. Shinde, learned APP vehemently opposed the Bail Application. She submitted that in the statement of the victim recorded under Section 164 of the Cr.PC., the involvement of the Applicant in the offence in question is set out. She submitted that the

material on record shows that the Applicant is involved in the grievous crime. She also pointed out the D.N.A. report dated 23rd June 2023, regarding examination of the fetus which records that although the victim is the biological mother, however, the Applicant is excluded to be the biological father.

6. Mr. Kilor, learned Counsel appointed to represent Respondent No.2 submitted that although the D.N.A. report does not support the prosecution case, however, the material on record shows that the victim was subjected to a sexual assault by the Applicant on multiple occasions and therefore the Bail Application be rejected.

7. Perusal of the record shows that the F.I.R. was lodged on 28th June 2022 and the Applicant was arrested on the same day. The investigation is completed and the Charge-sheet was filed on 24th August 2022. The Applicant is incarcerated since about 1 year and 10 months. As per the Charge-sheet, the prosecution proposes to examine about 23 witnesses. Accordingly, a considerable time will be required to conclude the trial.

8. *Prima facie*, there is substance in the contention of the learned Counsel for the Applicant that as the D.N.A. report dated 23rd June 2023 specifically records that the Applicant is excluded to be biological father of the fetus, there is a possibility that the Applicant may not be involved in the offence in question. It is also required to be noted that

the learned Trial Court *inter alia* rejected the Bail Application by the Order dated 20th January 2023 by specifically observing that the D.N.A. report is awaited. As the D.N.A. report does not support the prosecution case, at this stage, the Applicant is entitled to be released on bail by imposing certain conditions.

9. Mr. Kilor, learned Counsel appointed to represent Respondent No.2 states that even if the bail is granted, the Respondent No.2 be directed not to enter District-Palghar as the victim and the witnesses are residing at District Palghar. In view of the said contention, Mr. Mishra, learned Counsel for the Applicant on instructions state that the Applicant will reside at C/o Anant P. Puthal, at Flat No.504, Jay Malhar Apartment, Sector 20 D, Airoli gaon, Airoli, Navi Mumbai.

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

11. The Applicant does not have any criminal antecedents.

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

13. In view thereof, the following order:-

ORDER

(a) The Applicant - Harekrishan Abhimanya Muduli be released on bail in connection with C.R. No.562 of 2022 registered with the Pelhar Police Station, District – Palghar on his furnishing P.R. Bond of Rs.25,000/- with one or two local

solvent sureties in the like amount.

(b) The Applicant shall not enter the Palghar district 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 Rabale Police Station, District - Thane 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 Rabale Police Station, District - Thane 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 prosecution witnesses 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.

14. The Bail Application is disposed of accordingly.

15. It is clarified that the Trial Court shall decide the case on its merits, uninfluenced by the *prima facie* observations made in this Order.

16. This Court places on record its appreciation for the valuable assistance rendered by Mr. Kilor, the learned Advocate. The High Court Legal Services Authority, Mumbai to pay professional fees to the learned Advocate, as per rules and his name be included in the Panel.

[MADHAV J. JAMDAR, J.]