

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

BAIL APPLICATION NO.976 OF 2023

Shakil Badshah Shaikh

.Applicant

Versus

The State of Maharashtra & Anr.

.Respondents

Mr. Hemant Ingle a/w. Ms. Jasmeet Kaur, Mr. Pratik Ingle, & Mr. Vedang Deshpande i/b. Mr. Prashant Goyal, Advocates, for the Applicant.

Mr. P. H. Gaikwad, APP, for Respondent No.1 – State.

Ms. Gargi U. Warunjikar, Advocate, for Respondent No. 2.

CORAM: MADHAV J. JAMDAR, J.

DATE: 21.03.2024

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1. Heard Mr. Ingale, learned Counsel for the Applicant, Mr. Gaikwad, learned APP for Respondent No. 1 - State and Ms. Warunjikar, learned Counsel appointed to represent the interests of Accused No.2.

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.	714 of 2021
2.	Date of registration of F.I.R.	21.08.2021
3.	Name of Police Station	Virar, Palghar district
4.	Section/s invoked	376, 506 of the I.P.C., 1860; 3 & 4 of the P.O.C.S.O. Act, 2012
5.	Date of incident	01.05.2018 to 31.03.2021
6.	Date of arrest	21.08.2021
7.	Date of filing of Charge-sheet	13.11.2021

3. The Informant/Complainant is the mother of the victim. The Applicant suggested to the Complainant that the victim should go to the temple which is situated at Katkari Pada and have a sacred thread tied on her wrist so that she will be cured of her illness free of cost. Hence, the Complainant sent the victim alongwith the Applicant to the aforesaid location. Thereafter also the Complainant again went to the said location alongwith the victim. Due to household chores, it was not possible for the Complainant to go to the said temple alongwith the victim on every occasion. Hence, the Complainant used to send the victim alongwith the Applicant who was also residing in the same building as that of the Complainant and she had trust in him. As per the prosecution case, the Applicant frequently used to visit the victim's house. As the Applicant had cordial relations with the victim, he used to speak with the victim on cell phone and he told the victim to delete the WhatsApp messages sent by him to her. In the month of March 2021, the victim missed her menstruation. However, as the victim's menstrual cycles used to be irregular, the Complainant did not pay any attention. In July 2021, when the Complainant alongwith the victim had gone to meet her husband, the victim was suffering from a stomach ache. When the Complainant consulted a physician for the victim's stomach ache, the physician told her that the victim was pregnant. Thereafter, the victim told the Complainant that in the month of March 2021, when the victim used to return from her coaching class, the Applicant, by taking advantage of the

victim being alone, used to take her to a hut at Katkari Pada and would sexually assault her. Therefore, the Complainant lodged a complaint on 21.08.2021. In the complaint, it is specifically mentioned that the victim was sexually assaulted by the Applicant.

4. Mr. Ingle, learned Counsel for the Applicant submitted that the F.I.R. in question is a false F.I.R.. He submitted that the Applicant was arrested on 21.08.2021 and that there is no progress in the trial till date and that the Charge is also not framed yet. Apart from that, he submitted that the D.N.A. Report shows that the victim is the biological mother of the child, however, the Applicant is not the biological father of the said child. He therefore submitted that the Applicant may be released on bail.

5. Mr. Gaikwad, learned APP for Respondent No.1 – State and Ms. Warunjikar, learned Counsel appointed to represent the interests of Respondent No.2 vehemently opposed the Bail Application. They submitted that the statement of the victim recorded under Section 164 of the CrPC as well as other material on record clearly show the involvement of the Applicant in the offence in question. The said offence is a very serious. Therefore, bail may not be granted to the Applicant.

6. Ms. Warunjikar, learned Counsel appearing for Respondent No.2 relied on the decisions of this Court in the case of *Abbas Asmat Ali v. State of Maharashtra*¹, and *Dashrath v. State of Maharashtra*²

¹ 2022 SCC OnLine Bom 3388

² (2021) 4 Bom CR (Cri) 146

and submitted that though a positive result of D.N.A. would constitute clinching evidence against the Accused, yet if the result is in negative, the other material available on record will still have to be considered independently. She, therefore, submitted that the Bail Application be rejected.

7. A perusal of the record shows that the F.I.R. was lodged on 21.08.2021. The Applicant was arrested on 21.08.2021. Charge-sheet was filed on 13.11.2021. As per the Charge-sheet, there are about 13 witnesses proposed to be examined by the prosecution. Till date, there is no progress in the trial and even charge is also not framed yet. The Applicant is behind bar for more than 2 years and 5 months.

8. It is significant to note that there is no allegation against any other person. Admittedly, the victim was pregnant and a female child was born to her. The D.N.A. Report shows that the victim is the biological mother of the said female child but also shows that the Applicant is not the biological father of the said female child. However, there is substance in the contention of Ms. Warunjikar, learned Counsel for Respondent No.2 that a positive result of D.N.A. would constitute clinching evidence against the Accused and even if the D.N.A. result is negative, other material available on record will still have to be considered independantly. *Prima facie*, there is substance in the contention advanced by the learned Counsel for the Applicant that except for the statement of the victim, there is no other independent corroborative material available on record to

connect the Applicant with the offences in question.

9. The trial is likely to take a considerably long time.
10. Mr. Ingle, learned Counsel for the Applicant states that as most of the witnesses are residing at Taluka-Vasai, District-Palghar, the Applicant will therefore not reside within Taluka-Virar, District-Palghar and that the Applicant will reside at the residence of Mr. Shaikh Badshah, R/o. C/22, Bismillah Building, A. K. Marg, Bandra(E), Mumbai – 400 051 and will attend the Kherwadi Police Station, Bandra.
11. The Applicant does not appear to be at risk of flight.
12. Accordingly, the Applicant can be enlarged on bail by imposing conditions.
13. In view thereof, the following order:-

ORDER

- (a) The Applicant - Shakil Badshah Shaikh be released on bail in connection with C.R. No.714 of 2021 registered with the Virar Police Station, Virar 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 Taluka-Vasai, District-Palghar 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 Kherwadi Police Station, Bandra once a week, on every Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Kherwadi Police Station, Bandra 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.

14. The Bail Application is disposed of accordingly.

15. It is clarified that the observations made herein are *prima facie*, and the Trial Court shall decide the case on its merits, uninfluenced

by the observations made in this order.

16. This Court places on record its appreciation for the valuable assistance rendered by Ms. Warunjikar, learned Counsel appointed to represent the interests of the Respondent No.2. The High Court Legal Services Committee, Mumbai to take steps to pay professional fees to the learned Counsel for Respondent No.2 and her name be included on the panel.

[MADHAV J. JAMDAR, J.]