

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1434 OF 2023**

Rushikesh Datta Giri

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. Satyam H. Nimbalkar i/by Mr. Abhishek Arote, for the Applicant.
Ms. Savita Yadav, APP, for Respondent- State.
Ms. Kajal Upadhyay a/w Anima Mishra, & Anuj Singh for Respondent No.2.

CORAM: MADHAV J. JAMDAR, J.

DATED: 18th March 2024

P. C.

1. Heard Mr. Nimbalkar, learned Counsel for the Applicant, Ms. Yadav, learned A.P.P. for the Respondent-State and Ms. Upadhyay, learned Counsel appointed to represent the interests of the 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.	400 of 2022
2.	Date of registration of F.I.R.	31 st July 2022
3.	Name of Police Station	Loni Kalbhor, District-Pune
4.	Section/s invoked	376(2)(n), 376(A)(B), 506 of <i>I.P.C., 1860</i> ; 3,4, & 5 of <i>POCSO, 2012</i>

5.	Date of incident	Before 24 th July 2022
6.	Date of arrest	31 st July 2022
7.	Date of filing Charge-sheet	October 2022

3. As per the prosecution case, the victim is 5 years old. She was residing with her maternal aunt and the present Applicant is the son of her cousin sister. As per the prosecution, the Applicant sexually assaulted the minor victim repeatedly before 24th July 2022 in the house of the maternal aunt of the victim. The mother of the victim i.e. the Informant/Respondent No.2 had gone to the house of aunt of the victim to bring her back at Mumbai for few days. On 27th July 2022, when she was bathing the victim and touched the victim's genitals, the victim disclosed the act of sexual assault committed by the present Applicant with her. Accordingly, on 30th July 2022, the mother of the victim lodged a complaint against the Applicant.

4. It is the submission of Mr. Nimbalkar, learned Counsel for the Applicant that the Applicant and the mother of the victim were in a consensual relationship. The mother of the victim is not residing with her husband and has separated from her husband. In fact, the victim is residing with her maternal aunt since the beginning. He submitted that the victim is close to the maternal aunt as since beginning she is staying with her. He submitted that said maternal aunt has stated

that the victim has not informed to her anything. He submitted that the mother of the victim is 35 years old and the present Applicant is 25 years old and both of them were in a consensual relationship.

5. Mr. Nimbalkar, learned Counsel for the Applicant submitted that on 7th August 2022, the Applicant was getting engaged with a girl and the said invitation card was sent to the victim's mother and thereafter the conversation took place between the victim's mother and the Applicant between 19th July 2022 and 27th July 2022. He pointed out the said WhatsApp chat, which shows that both the Applicant and the victim's mother were indicating that their consensual relationship would continue even after the Applicant gets married. The said WhatsApp chat also shows that the Applicant was insisting that the victim's mother also attend the said engagement ceremony and she has refused the same. The WhatsApp chat also shows that in fact the victim's mother was not happy with the said engagement ceremony. The F.I.R. was lodged on 31st July 2022 and the Applicant was apprehended immediately on 31st July 2022. Mr. Nimbalkar, learned Counsel for the Applicant submitted that now the Charge-sheet is filed and till date, there is no progress in the trial and therefore, the Applicant be granted bail. Mr. Nimbalkar, learned Counsel pointed out the medical report and submitted that the

findings recorded in the medical report do not corroborate with the case of the prosecution.

6. On the other hand, Ms. Yadav, learned APP and Ms. Kajal Upadhyay, learned Counsel for the Respondent No.2 vehemently opposed the Bail Application and both of them submitted that although there was a consensual relationship between the victim's mother and the Applicant, the same has no relevance to the offence in question. She submitted that the F.I.R. and other material on record clearly indicate the involvement of the Applicant in the offence in question. Both of them pointed out the final opinion recorded in the medical report, which records that the possibility of commission of an offence cannot be ruled out.

7. Perusal of records shows that *prima facie*, there is substance in the contention of Mr. Nimbalkar, learned Counsel for the Applicant that the Applicant and the mother of the victim were in a consensual relationship and the mother of the victim was upset as the Applicant was getting engaged. *Prima facie*, there is substance in the contention of Mr. Nimbalkar that the sister of the victim with whom the victim was residing, has stated that she was not aware about the incident and therefore, her statement is not helpful to the prosecution.

8. In any case, the incident in question took place before 24th July 2022, the offence was registered on 31st July 2022, the Applicant was apprehended on 31st July 2022, and the Charge-sheet was filed in October 2022. Till date, there is no further progress in the trial and even the Charge is also not framed yet.
9. It is an admitted position that investigation has been completed and that Charge-sheet has been filed in October 2022. There are 12 witnesses as per the Charge-sheet. The trial is likely to take a considerably long time.
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 - Rushikesh Datta Giri be released on bail in connection with C.R. No.400 of 2022 registered with the Loni Kalbhor Police Station, District - Pune on his furnishing P. R. Bond of Rs.25,000/- with one or two local solvent sureties in the like amount.

(b) 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.

(c) The Applicant shall report to the Loni Kalbhor Police Station, District - Pune on the Sunday of every week between 11.00 a.m. and 1.00 p.m. until the conclusion of the trial.

(d) 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.

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

(f) The Applicant shall not contact the victim and victim's mother.

(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. Kajal Upadhyay, learned Counsel appointed to represent the interests of Respondent No.2. High Court Legal Services Committee, Mumbai to pay professional fees to Ms. Upadhyay as per rule and her name be included on the Panel.

BHALCHANDRA
GOPAL
DUSANE

[MADHAV J. JAMDAR, J.]

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