

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

BAIL APPLICATION NO. 1686 OF 2024

Avinash Appasaheb Rothe

.Applicant

Versus

The State of Maharashtra & Anr.

.Respondents

Mr. Anandmaya Dhorde, Advocate, for the Applicant.

Ms. Savita M. Yadav, APP, for Respondent No.1 – State.

Mr. Ashish Baraskar, Advocate, for Respondent No.2.

CORAM: MADHAV J. JAMDAR, J.

DATE: 09.05.2024

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1. Heard Mr. Dhorde, learned Counsel for the Applicant, Ms. Yadav, learned APP for Respondent No.1-State and Mr. Baraskar, Advocate, for Respondent 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.	307 of 2023
2.	Date of registration of F.I.R.	23.05.2023
3.	Name of Police Station	Yeola, District - Nashik
4.	Sections invoked	376, 363, 354 of I.P.C., 1860; 4, 8, 12 & 17 of POCSO Act, 2012.
5.	Date of incident	22.05.2023
6.	Date of arrest	14.11.2023
7.	Date of filing of Charge-sheet	05.02.2024

3. As per the prosecution case, the Applicant forcibly took the

victim along with him and sexually assaulted her.

4. It is the contention of Mr. Dhorde, learned Counsel for the Applicant that the Applicant is a young man aged 21 years. At the relevant time, age of the Victim was about 15 years and 4 months. It is the contention of Mr. Dhorde, learned Counsel for the Applicant that both of them were involved in a romantic relationship. Therefore, the Victim voluntarily accompanied the Applicant. He submitted that in the statement recorded under Section 161 of the CrPC, the Victim has specifically stated that the Applicant has not committed any sexual assault on her. He submitted that the incident in question has taken place on 22.05.2023. The F.I.R. was lodged on 23.05.2023. The Applicant was apprehended on 24.05.2023 and he was released on bail by the learned Addl. Sessions Judge, Yeola, District-Nashik by Order below Exh. 1 dated 01.06.2023. He submitted that in the statement of the victim recorded under Section 161 of the CrPC on 23.05.2023, it is specifically recorded that the Applicant had not committed any sexual assault on the victim. Thereafter, the said statement was changed while the statement under Section 164 of the CrPC was recorded and the said statement was recorded on 23.10.2023. Immediately thereafter, the Applicant was arrested on 14.11.2023. He pointed out the medical evidence and submitted that it does not support the prosecution case. In fact, the medical evidence corroborates the statement recorded under Section 161 of the CrPC. He therefore prayed that the Applicant be

enlarged on bail.

5. Ms. Yadav, learned APP for Respondent No.1-State and Mr. Baraskar, learned Counsel for Respondent No.2 vehemently opposed the Bail Application. Both submitted that in the statement recorded under Section 164 of the CrPC, the Victim has specifically stated that she was sexually assaulted by the Applicant. Therefore, the Bail Application be rejected.

6. A perusal of the record shows that the incident in question has taken place on 22.05.2023. The F.I.R. was lodged on 23.05.2023. The Applicant was apprehended on 25.05.2023. However, he was granted bail on 01.06.2023. The statement of the victim under Section 164 of the CrPC was recorded on 23.10.2023. Thereafter, the Applicant was apprehended on 14.11.2023.

7. *Prima facie*, there is substance in the contention of Mr. Dhorde, learned Counsel for the Applicant that the case is improved in the statement recorded under Section 164 of the CrPC. It is to be noted that the statement of the Victim recorded under Section 161 of the CrPC was recorded in the presence of the mother as well as the sister of the Victim. In the said statement, it is specifically mentioned that the Applicant has not sexually assaulted the Applicant. The Applicant is a young man aged 21 years.

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

9. Mr. Dhorde, learned Counsel for the Applicant states that as

several witnesses are residing in the District - Nashik, the Applicant will therefore not reside within District-Nashik and will reside at RH-113/7, Saptashrunji Colony, Bajaj Nagar, Walunj, Aurangabad and will attend the Walunj M.I.D.C. Police Station, Aurangabad.

10. The Applicant does not appear to be at risk of flight.
11. Accordingly, the Applicant can be enlarged on bail by imposing conditions.
12. In view thereof, the following order:

ORDER

(a) The Applicant - Avinash Appasaheb Rothe be released on bail in connection with C.R. No.307 of 2023 registered with the Yeola Police Station, District-Nashik on his furnishing P.R. Bond of Rs.25,000/- with one or two solvent sureties in the like amount.

(b) The Applicant shall not enter District-Nashik 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 Walunj M.I.D.C. Police Station, Aurangabad once a month, on first Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the

trial. The Police Inspector of Walunj M.I.D.C. Police Station, Aurangabad 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.

13. The Bail Application is disposed of accordingly.

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

[MADHAV J. JAMDAR, J.]