

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

CRIMINAL BAIL APPLICATION NO.1476 OF 2023

Abdul Dawood Shaikh	...Applicant
<i>Versus</i>	
The State of Maharashtra & Anr.	...Respondents

Ms. Pooja Agarwal (through Video Conference), Advocate, for the Applicant.
 Mr. P. H. Gaikwad, APP, for the Respondent-State.
 Mr. Shubham Sane, Advocate for the Respondent No.2.
 Mr. Sanjay Madhukar Aadling, P.S.I., Wanwadi Police Station, District-Pune present.

**CORAM: MADHAV J. JAMDAR, J.
DATED: 13th MARCH 2024**

P.C.:

1. Heard Ms. Agarwal, learned Counsel for the Applicant, Mr. Gaikwad, learned APP for the Respondent No.1-State and Mr. Sane, learned Counsel for 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.	27 of 2023
2.	Date of registration of F.I.R.	13/01/2023

3.	Name of Police Station	Wanwadi Police Station, District-Pune
4.	Section/s invoked in F.I.R.	363 of the <i>I.P.C., 1860</i>
5.	Section/s invoked in Charge-sheet	363, 376, 376(2)(f)(j)(n), 366-A of the <i>I.P.C., 1860</i> ; 4, 6 and 8 of the <i>POCSO Act, 2012</i> .
6.	Date of incident	12/01/2023
7.	Date of arrest	28/01/2023
8.	Date of filing of Charge-sheet	March 2023..

3. The Complainant is the mother of the victim. Age of the victim is 17 years and 3 months. As per the prosecution case, on 11th January 2023, the victim without informing anyone had escaped the house and therefore the Complainant lodged a complaint for kidnapping against an unknown person at Wanwadi Police Station, Pune under Section 363 of the *Indian Penal Code, 1860*. On 17th January 2023, the victim returned home and her statement came to be recorded by the police on 17th January 2023. It is alleged in the statement of victim dated 17th January 2023 that the Applicant had under the pretext of marriage lured the victim outside the house and went for shopping. Thereafter, the Applicant has disclosed that he is already married and was having two children. Therefore, the victim returned on 17th January 2023. In

the statement dated 17th January 2023, it is specifically stated that no sexual relations were established between the Applicant and the victim. Initially the victim and the Complainant refused for a medical examination of the victim. However, on 23rd January 2023, the victim was again sent to the Sassoon General Hospital – Pune for a medical examination and she was found to be 6 weeks pregnant. It appears that thereafter, the victim has made a supplementary statement dated 26th January 2023. In the said statement, the victim has stated about the incidents which had occurred in the month of July 2022. The history of the victim as recorded by the Sassoon General Hospital shows that the victim had told the concerned Doctor that she was in a relationship with the Applicant. As per the prosecution case, the Applicant made a promise of marriage to the victim but later disclosed to the victim that he was already married.

4. Ms. Agarwal, learned Counsel for the Applicant submitted that the relationship between the Applicant and the victim is consensual. She submitted that the Applicant is a close relative of the victim and therefore, she was aware that the Applicant was already married. She submitted that the Applicant is behind bars

since 28th January 2023 and Charge-sheet is already filed. She submitted that there are no criminal antecedents against the Applicant.

5. On the other hand, Mr. Gaikwad learned APP for the Respondent-State and Mr. Sane, learned Counsel for the Respondent No.2 strongly opposed the Bail Application. They submitted that the victim is a minor aged 17 years and 3 months. Although the victim and the Applicant were in a romantic relationship, however the Applicant made a false promise of marriage. They pointed out the victim's supplementary statement dated 26th January 2023. They submitted that the Applicant is a close relative of the victim and therefore there is a possibility of tampering with the evidence and therefore they submitted that the Bail Application be rejected.

6. Perusal of the record shows that the victim in the first statement dated 17th January 2023 has not stated about any sexual relation between the Applicant and herself. In fact, she refused to undergo medical examination. However, thereafter, she was medically examined on 23rd January 2023 and at that time it was

found that she was 6 weeks pregnant. Thereafter, her supplementary statement was recorded. Although in the supplementary statement she has stated that the earlier statement was given under pressure, however *prima facie* the relationship between the victim and the Applicant appears to be consensual. Although the Applicant is a minor aged 17 years and 3 months, *prima facie* she understands the consequences of the actions.

7. Perusal of the record further shows that in the present case, the incident in question occurred on 12th January 2023, F.I.R. was lodged on 13th January 2023, the Applicant was arrested on 28th January 2023 and Charge-sheet has been filed in March 2023. There is no progress in the trial. As per the Charge-sheet there are about 19 witnesses proposed to be examined by the prosecution. The trial is unlikely to conclude any time soon and is likely to take a considerably long time.

8. As the Applicant and the victim are close relatives, Mr. Gaikwad, learned APP, for the Respondent No.1-State and Mr. Sane, learned Counsel for the Respondent No.2 expressed an apprehension of possibility of tampering with the prosecution

evidence. Ms. Agarwal, learned Counsel for the Applicant states that the Applicant will not reside in Pune and Solapur districts as the victim resides at Pune and her hometown is in the Solapur district. Therefore, the Applicant will reside at C/o. Mrs. Shama Khurshid Ansari, Ralegan Ferrer, Karkhile Vasti, Taluka-Parner, District-Ahmednagar.

9. There are no criminal antecedents against the present Applicant.

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

11. Accordingly, the Applicant can be enlarged on bail by imposing conditions. In view thereof, the following order:-

ORDER

(a) The Applicant - Abdul Dawood Shaikh be released on bail in connection with C.R. No.27 of 2023 registered with the Wanwadi 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) The Applicant shall not enter the Pune and Solapur districts 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 Nighoj Police Station, Taluka - Parner, District – Ahmednagar once every week, on every Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Nighoj Police Station, Taluka - Parner, District – Ahmednagar 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.

12. The Bail Application is disposed of accordingly.

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

[MADHAV J. JAMDAR, J.]