

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

BAIL APPLICATION NO. 2169 OF 2023

Omkar Lahu *alias* Lavesh Panchal

.Applicant

Versus

The State of Maharashtra & anr.

.Respondents

Mr. Vasantkumar V. Takke, Advocate, for the Applicant.

Mr. P. P. Deokar, APP, for Respondent No.1 – State.

Mr. Shreyas Barsawade, Advocate, for Respondent No. 2.

CORAM: MADHAV J. JAMDAR, J.

DATE: 02.05.2024

P. C.

1. Heard Mr. Takke, learned Counsel for the Applicant, Mr. Deokar, learned APP and Mr. Barsawade, learned counsel for 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.	833 of 2022
2.	Date of registration of F.I.R.	05.09.2022
3.	Name of Police Station	Virar
4.	Sections invoked	376(2)(i), 376(2)(n) of the I.P.C., 1860; 4, 5(k) & 6 of POCSO Act, 2012.
5.	Date of incident	June, 2022
6.	Date of arrest	23.09.2022
7.	Date of filing of Charge-sheet	23.11.2022

3. As per the prosecution case, the victim who is a child with

special needs, was sexually assaulted by the present Applicant. The victim is about 16 years and 10 months old. The victim is deaf and mute. As the victim was not well, the victim's mother took her to the Doctor at Government Hospital on 02.09.2022 and 05.09.2022 and it was found that the victim was pregnant. The victim owing to her disability, could not say anything about who was responsible for the present assault. However, she was shown the photographs of about 15 boys from her locality and she then indicated that the Applicant is responsible for the offence in question. Therefore, the F.I.R. was lodged against him.

4. It is the contention of Mr. Takke, learned Counsel for the Applicant that the D.N.A. Report does not show a positive match. Therefore, the Applicant is not responsible for the offence. He submitted that the Applicant is a 19 years old student and that his entire life will be adversely affected. There are no other antecedents.

5. On the other hand, Mr. Deokar, learned APP vehemently opposed the Bail Application. He submitted that although the D.N.A. Report does not show a positive match, it does not mean that the Applicant is not responsible for the sexual assault. He submitted that there are other persons who might have sexually assaulted the victim. He, therefore, submitted that the Bail Application be dismissed.

6. Mr. Barsawade, learned Counsel for Respondent No.2 supported the contention of Mr. Deokar, learned APP and submitted that there is a statement of one witness by name Vithoba Shankar

Patere who states that the Applicant is a resident of the adjoining chawl and he was seen in the chawl, where the victim stays. He, therefore, submitted that the Bail Application be rejected.

7. Perusal of the record shows that the F.I.R. was lodged on 05.09.2022. The Applicant was arrested on 23.09.2022. The Charge-sheet was filed on 23.11.2022. Till date, there is no progress in the trial.

8. Apart from that it is to be noted that the Applicant is a resident of adjoining chawl. Therefore, his presence in the chawl in the victim's case may not be an incriminating circumstance.

9. As investigation is complete and the Charge-sheet is filed, therefore there is no reason to deny Bail to the Applicant. It is to be noted that the D.N.A. Report does not show a positive match and the only circumstance against the Applicant is that the victim who is a child with special needs, pointed out to a photograph of the Applicant.

10. The Applicant is a young man aged 19 years.

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

12. Mr. Takke, learned Counsel for the Applicant states that as several witnesses are residing in the same locality as that of the Applicant, the Applicant will therefore not reside within the jurisdiction of Virar Police Station and that the Applicant will reside at Shree Samarth Bholenath Chawl, Room No. 2, Ganesh Nagar, Diva,

Aagasan Road, Diva (E) – 400 612 and will attend the Diva Police Station.

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

ORDER

(a) The Applicant - Omkar Lahu *alias* Lavesch Panchal be released on bail in connection with C.R. No.833 of 2022 registered with the Virar Police Station 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 Virar, 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 Diva Police Station, District – Thane once every week, on every Sunday between 11.00 a.m. and 1.00 p.m. for six months and thereafter, once a month till the conclusion of the trial. The

Police Inspector of Diva 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 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.

16. The Bail Application is disposed of accordingly.

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

18. This Court places on record its appreciation for the valuable assistance rendered by Mr. Barsawade, learned Counsel.

[MADHAV J. JAMDAR, J.]