

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

BAIL APPLICATION NO. 2385 OF 2023

Nikhil Rajendra Gosavi

.Applicant

Versus

The State of Maharashtra & Anr.

.Respondents

Mr. Siddhant H. Deshpande a/w. Mr. Abhishek R. Avachat, Advocates,
for the Applicant.

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

Mr. Shubham S. Sane, Advocate, for Respondent No. 2.

CORAM: MADHAV J. JAMDAR, J.

DATE: 22.04.2024

P. C.

1. Heard Mr. Deshpande, learned Counsel for the Applicant, Mr. Malshe, learned APP for Respondent No.1-State and Mr. Sane, learned Counsel appointed to represent interests of 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.	252 of 2022
2.	Date of registration of F.I.R.	29.09.2022
3.	Name of Police Station	Vishrantwadi, Pune
4.	Sections invoked	363, 376(2)(n) of IPC, 1860; 4, 5(1) & 6 of POCSO Act, 2012
5.	Date of incident	28.09.2022 to 08.11.2022
6.	Date of arrest	09.11.2022
7.	Date of filing of Charge-sheet	25.11.2022

3. As per the prosecution case, the Applicant and the Victim, who

was 15 years and 9 months old at the time of the incident, were in a romantic relationship. Initially, an F.I.R. was lodged under Section 363 of the Indian Penal Code, 1860 by the father of the Victim. In the F.I.R., it is stated that at about 11.30 a.m. on 28.09.2022, she had left her house for purchasing eatables from a shop named Sai Bakery. Thereafter, her whereabouts are not known. The police found her on 08.11.2022 alongwith the Applicant and in the statement dated 10.11.2022, she has stated that she was in a relationship with the Applicant, and as her father objected to the same and scolded her, she left the house on 28.09.2022 and went to the house of the Applicant and insisted they should elope. Therefore, the Applicant went along with her and they resided at Vani, Nashik. There, the Applicant was working as a labourer. The victim has narrated the same in her statement recorded under Section 164(5) of the CrPC.

4. It is the contention of Mr. Deshpande, learned Counsel for the Applicant that this is a case of a romantic relationship between the Applicant and the Victim. He submitted that in fact, the Victim came to the Applicant's house and insisted that they should elope. Therefore, the Applicant took the Victim and went to Vani and started living there. He submitted that the Applicant is incarcerated since 09.11.2022. The Applicant is a young man aged 24 years. Therefore, the bail Application may be granted.

5. On the other hand, Mr. Malshe, learned APP for Respondent No.1-State and Mr. Sane, learned Counsel appointed to represent

interests of Respondent No.2 vehemently opposed the Bail Application. They submitted that although factual position on record shows that the Victim had voluntarily gone with the Applicant, yet the age of the Victim at the time of the incident was 15 years and 9 months. Therefore, the Victim was not capable of understanding the consequences of her action. They submitted that there is one antecedent under Section 307 of the IPC.

6. A perusal of the record shows that the incident in question has taken place from 28.09.2022 to 08.11.2022. The offence was registered on 29.09.2022. The Applicant was arrested on 09.11.2022. The charge-sheet was filed on 25.11.2022. As per the charge-sheet, the prosecution intends to examine 22 witnesses. Till date, there is no progress in the trial and even charge is also not framed yet.

7. Prima facie, there is substance in the contention of learned Counsel for the Applicant that the victim voluntarily fled with the Applicant. In fact, it was at the instance of the Victim that the Applicant took the steps of travelling from Pune to Vani along with the Victim. The Applicant is a young man aged 24 years.

8. Prima facie, a perusal of the record shows that although the victim's age was 15 years and 9 months when the incident in question has taken place, it appears that the relations were consensual and she was capable of understanding the consequences of her actions. There is one antecedent being C. R. No.179 of 2022 registered with the Vishrantwadi Police Station, Pune for the offences punishable under

Sections 307, 143, 147, 149 of the IPC; 4 and 25 of the Arms Act, 1959; 3, 4, and 7 of the Criminal Law (Amendment Act), 2018; and 37(1)(3) r/w. 135 of the Maharashtra Police Act, 1951. The Applicant has already been released on bail in that case.

9. Mr. Malshe, learned APP for Respondent No.1-State and Mr. Sane, learned Counsel appointed to represent the interests of Respondent No.2 also pointed out that there are two NCs lodged by the father of the victim against the brother as well as friend of the Applicant. Therefore, although I am granting bail to the Applicant, stringent conditions will have to be imposed upon him including that the Applicant shall not reside in Pune district.

10. In view of these circumstances, Mr. Deshpande, learned Counsel for the Applicant on instructions states that the Applicant will reside at the residence of paternal aunt-Ms. Komal Jeevan Khandvi, opposite Santoshi Temple, Indira Nagar, Village-Vani, Taluka-Dindori, District-Nashik and will attend the Vani Police Station-Nashik(Rural).

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

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

13. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

14. In view thereof, the following order:-

ORDER

(a) The Applicant - Nikhil Rajendra Gosavi be released on bail in connection with C.R. No.252 of 2022 registered with the Vishrantwadi Police Station, District – Pune 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-Pune 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 Vani Police Station, Nashik (Rural) once a week, on Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Vani Police Station, Nashik (Rural) 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.

15. The Bail Application is disposed of accordingly.

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

17. This Court places on record its appreciation of the assistance rendered by Mr. Shubham Sane, learned Counsel appointed to represent the interests of Respondent No.2. His professional fees be paid as per rules and his name be included in the list of legal-aid Advocates.

[MADHAV J. JAMDAR, J.]