

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

BAIL APPLICATION NO.2645 OF 2023

Hiralal *alias* Adhyaksh
Bojappa Malekar

.Applicant

Versus

The State of Maharashtra
& Anr.

.Respondents

Mr. Ritesh Thobde a/w. Ms. Zubi Ansari, Mr. Sagar Tambe &
Ms. Ankita Rai, Advocates, for the Applicant.
Mr. Sameer Mandgaonkar, APP, for Respondent No.1 – State.
Mr. M. V. Thorat, Advocate, for Respondent No.2.

CORAM: MADHAV J. JAMDAR, J.

DATE: 13.02.2024

P. C.

1. Mr. M. V. Thorat, learned Counsel of this Court is appointed as Legal Aid Counsel through the High Court Legal Services Committee, Mumbai to represent the Respondent No. 2.

2. Heard Mr. Thobde, learned Counsel appearing for the Applicant, Mr. Mandgaonkar, learned APP appearing for Respondent No.1–State and Mr. Thorat, learned Counsel appearing for Respondent No.2.

3. 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.	271 of 2023
2.	Date of Registration of F.I.R.	22.05.2023
3.	Name of Police Station	Jodbhavi Peth Police Station, Solapur
4.	Section/s invoked	Sections 370, 376, 342 r/w. 34 of the I.P.C., 1860; 3, 4, 5 & 6 of the Immoral Traffic (Prevention) Act, 1956; 4, 6, 8, 10, 12 & 17 of the POCSO Act, 2012; 81 of the Juvenile Justice Act, 2015.
5.	Date of arrest	28.05.2023
6.	Date of filing Charge-sheet	12.07.2023

4. As per the prosecution case, as the relations of parents of the victim were not cordial and as there were frequent quarrels between them, in the year 2011, they started residing separately. At that time, the victim was only three years old and started residing with her father, who is Accused No.1. It appears that when the victim was 12 years old, Accused No.1 - father sold her to an organisation by the name 'Jay Malhar Lok Kala Kendra' in lieu of consideration. It appears that thereafter the victim was sold to five such Lok Kala Kendras by the Accused No.1 - father who accepted consideration for the same. On 17.05.2023 the victim contacted her mother through social media and thereafter the mother lodged a complaint. The victim was rescued and

handed over to her mother.

5. It is the contention of Mr. Thobde, learned Counsel appearing for the Applicant that the Applicant's name is mentioned neither in the F.I.R. nor in the Section 164 CrPC, 1973 statement recorded before the Court. He submitted that his name is mentioned in the Supplementary statement dated 24.05.2023. He submitted that there is no role of the Applicant in the said transactions. He is merely a customer and that he is neither involved in the actual offence of transportation nor in the transactions of selling and purchasing of the victim.

6. On the other hand, Mr. Mandgaonkar, learned APP appearing for Respondent No.1 - State and Mr. Thorat, learned Counsel appearing for Respondent No.2 strongly oppose the Bail Application vehemently on the ground that in the Supplementary Statement dated 24.05.2023, the Applicant's name is mentioned. He further submitted that there is incriminating material in the form of photographs. He, therefore, submitted that bail be not granted to the Applicant.

7. A perusal of the record shows that the F.I.R. has been lodged on 22.05.2023. The Applicant has been arrested on 28.05.2023. The Charge-sheet has been filed on 12.07.2023. As per the Charge-sheet, there are 33 witnesses proposed to be examined by the

prosecution. Therefore, the trial is likely to take a considerably long time.

8. *Prima facie* the role of the Applicant is that he is the customer and he has no active role in the main offence of transportation and transactions of selling and purchasing of the victim.

9. The Applicant does not have any criminal antecedents.

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 - Hiralal *alias* Adhyaksh Bojappa Malekar be released on bail in connection with C. R. No.271 of 2023 registered with the Jodbhavi Peth Police Station, District-Solapur on his furnishing P. R. Bond of Rs.25,000/- with one or two 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 Jodbhavi Peth Police Station, District-Solapur 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 witnesses in any manner.

(f) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(g) 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 observations made herein are *prima facie* and the trial Court shall decide the case on its own merits uninfluenced by the observations made in this order.

[MADHAV J. JAMDAR, J.]