

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

BAIL APPLICATION NO.4127 OF 2023

Nihal Tanaji Pawale

.Applicant

Versus

The State of Maharashtra & anr.

.Respondents

Mr. Ritesh Thobade a/w. Mr. Changdev Shingade & Ms. Zubi Ansari,
Advocate, for the Applicant.

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

Ms. Anandini Fernandes, Advocate, for Respondent No. 2

CORAM: MADHAV J. JAMDAR, J.

DATE: 13.03.2024

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1. Heard Mr. Thobade, learned Counsel for the Applicant, Ms. Yadav, learned APP for Respondent No.1 - State and Ms. Fernandes, 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.	377 of 2023
2.	Date of registration of F.I.R.	06.04.2023
3.	Name of Police Station	Indapur Police Station, Pune(Rural)
4.	Section/s invoked	363, 376 of the I.P.C., 1860; 4, 8 & 12 of the POCSO Act;

		3, 3(1)(w)(i) & (ii) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; 7(1)(d) of the Protection of Civil Rights Act, 1955.
5.	Date of incident	06.04.2023
6.	Date of arrest	14.04.2023

3. As per the prosecution case, on 06.03.2023, the Applicant kidnapped the victim i.e. the daughter of the informant and committed sexual assault. Respondent No.2 i.e. Informant is the father of the victim. At the relevant time, age of the victim was 15 years. As per the prosecution case, the Applicant was aware that the victim belongs to the SC/ST community and yet he kidnapped the victim and sexually assaulted her.

4. Mr. Thobade, learned Counsel appearing for the Applicant submitted that the statement of the victim and other material on record show that the victim and the Applicant were involved in a romantic relationship. He submitted that in fact, it is the victim who insisted on eloping with the Applicant and to marry with him. He pointed out that the Medico-legal examination report of the victim where the victim has narrated that both the Applicant and the victim went away willingly on

06.04.2023 to Aurangabad. They had sexual intercourse and the victim returned to Indapur on 15.04.2024.

5. On the other hand, Ms. Yadav, learned APP appearing for Respondent No.1 and Ms. Fernandes, learned Counsel appearing for Respondent No.2 vehemently opposed the Bail Application. They submitted that although it is the contention raised by learned counsel appearing for the Applicant that the Applicant and the victim were in a relationship, as the age of the victim was 15 years, the said alleged consensual sexual intercourse is irrelevant. They submitted that if bail is granted to the Applicant, there is an apprehension that the Applicant will attempt to influence the victim and other witnesses.

6. However, as apprehension is expressed that if the Applicant is released on bail, he will influence the victim and other witnesses. Mr. Thobde, learned Counsel appearing for the Applicant after taking instructions submitted that the Applicant will not enter Taluka – Indapur, District – Pune and will reside at the residence of Mr. Nihal Pawale, R/o. Phaltan Asu, Satara – 415 523 and will attend the Barad Police Station, Taluka – Phaltan, District – Satara.

7. Perusal of the record shows that the incident in question has taken place on 06.04.2023. F.I.R. was lodged on 06.04.2023. Initially,

only Section 363 of the *Indian Penal Code, 1860* was invoked. Charge-sheet was filed in July 2023. Investigation is complete.

8. *Prima facie*, there is substance in the contention of Mr. Thobade, learned Counsel for the Applicant that relationship between the Applicant and the victim is consensual. Although as per the statute, the age of 18 years is prescribed, the victim is an educated girl and *prima facie*, she is capable of understanding the consequences of the actions. The Applicant is aged 27 years.

9. The trial is likely to take a considerably long time.

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 - Nihal Tanaji Pawale be released on bail in connection with C.R. No.377 of 2023 registered with the Indapur Police Station, District – Pune (Rural) 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 the Taluka – Indapur, District – Pune after being released on bail, except for

reporting to the Investigating Officer, if called.

(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 Barad Police Station, Taluka - Phaltan, District – Satara 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 Barad Police Station, Taluka - Phaltan, District – Satara 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.

(i) The Applicant shall not contact the victim.

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, uninfluenced by the observations made in this order.

[MADHAV J. JAMDAR, J.]