

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

CRIMINAL BAIL APPLICATION NO. 3609 OF 2023

Tanaji Udhavrao Tawale

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. Suhas B. Rohile, Advocate, for the Applicant.

Mr. P.P. Malshe, APP, for Respondent-State.

Mr. Vaibhav Bhalchandra Thorve for Respondent No.2.

PI, J.V. Kadam, Uttamnagar Police Station, Pune City- present.

CORAM : MADHAV J. JAMDAR, J.

DATED : 18th April 2024

P. C.

1. Heard Mr. Rohile, learned Counsel for the Applicant, Mr. Malshe, learned APP for the Respondent-State and Mr. Thorve, learned Counsel for Respondent No.2.
2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973* ("CrPC"). The relevant details are as follows:-

1.	C.R. No.	45 of 2023
2.	Date of registration of F.I.R.	1 st April 2023
3.	Name of Police Station	Uttamnagar, Pune City, District-Pune
4.	Section/s invoked	376(2)(f), 354, 506 of <i>I.P.C., 1860</i> ; 4,6,8 of the <i>Protection of Children from Sexual Offences Act, 2012</i> .
5.	Date of incident	23 rd March 2023

6.	Date of arrest	1 st April 2023
7.	Date of filing Charge-sheet	23 rd May 2023

3. The Applicant is the husband of Respondent No.2 i.e. the Informant. The victim is their daughter, aged 7 years. As per the prosecution case, the victim was complaining about an itch in her private parts and therefore she was taken to the Doctor who opined that she had suffered sexual assault. Therefore, an F.I.R. was lodged on 1st April 2023, on the basis of the statement of the Informant.

4. It is the contention of Mr. Rohile, learned Counsel for the Applicant that the F.I.R. is not correct. He submitted that the Applicant is 53 years old and he is the only earning member of his family consisting of his wife, who is Respondent No.2 and his daughter i.e. the victim. He therefore submitted that the Applicant be released on bail.

5. Mr. Thorve, learned Counsel for the Respondent No.2 has tendered an Affidavit dated 15th March 2024 of Respondent No.2 on an earlier date. It is stated therein that the Applicant is the only earning member of the family and he is in jail for a period of more than 1 year and that the family is starving and struggling to earn a livelihood as the only earning member of the family is in jail. It is stated in the Affidavit that it is becoming very difficult to meet the day-to-day expenses and the educational expenses of the daughter.

6. On the other hand, Mr. Malshe, learned APP vehemently opposed the Bail Application. He submitted that the victim is only 7 years old. He submitted that the Applicant is the father of the victim and he has sexually assaulted the victim. He submitted that the medical evidence supports the prosecution case. However, he has tendered a statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973 and the said statement shows that the victim is not supporting the prosecution case. He submitted that the Bail Application be rejected.

7. Perusal of the record shows that the incident in question took place on 23rd March 2023, F.I.R. was lodged on 1st April 2023, the Applicant was arrested on 1st April 2023 and the Charge-sheet was filed on 23rd May 2023. Accordingly, the investigation is completed.

8. In view of the Affidavit of the Respondent No.2 dated 15th March 2024, the Respondent No.2 was directed to remain present in Court and the matter was heard in Chamber. She has reiterated the contents of the Affidavit during the hearing in Chamber. She has stated that in spite of repeated attempts, she is not able to secure employment. She has stated that therefore, she and her daughter are in fact starving. She stated that although she is working as a domestic help, the salary received is not adequate as their residential premises is on a leave and license basis. She stated that considering the expenses towards education of her

daughter, it is not possible for Respondent No.2 to maintain herself and her daughter with her current earnings. She therefore requested that the Applicant be released on bail. She has also stated that no incident as mentioned in the F.I.R. has taken place. This is a case where statement of the victim recorded under Section 164 of Cr.P.C. does not support the prosecution case.

9. The Applicant does not appear to be at risk of flight.
10. The Applicant does not have any criminal antecedents.
11. Accordingly, by taking into consideration the overall position on record, the Applicant can be enlarged on bail by imposing stringent conditions.
12. In view thereof, the following order:-

ORDER

(a) The Applicant - Tanaji Udhavrao Tawale be released on bail in connection with C.R. No.45 of 2023 registered with the Uttamnagar, Pune City Police Station, District - Pune on his furnishing P. R. Bond of Rs.5,000/- with one or two local 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 Uttamnagar Police Station, Pune City, District - Pune once a week i.e. on every Sunday 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 prosecution witness 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 Trial Court shall decide the case on its merits, uninfluenced by the *prima facie* observations made in this Order.

15. In the facts and circumstances of this case, the Maharashtra State Legal Services Authority, Mumbai is requested to depute two senior

paralegal volunteers to periodically visit the residence of the Respondent No.2.

[MADHAV J. JAMDAR, J.]