

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3174 OF 2024

Atul Prakash Kalkutaki	...Applicant
<i>Versus</i>	
State of Maharashtra & Anr.	...Respondents

Mr. Niranjan Bhavake a/w Ms. Drishti Madhani, Ms. Swamini Thakur, Mr. Anurag Ramekar i/by Bhavake & Associates, for Applicant.

Ms. S.G. Talhar, APP for the State.

Mr. Ankush S. Karande, PSI, Shahupuri Police Station, Kolhapur.

CORAM: MADHAV J. JAMDAR, J.

DATED : 27th March 2025

P.C.:

1. Heard Mr. Bhavake, learned Counsel for the Applicant and Ms. Talhar, learned APP for the State.

2. This is the second Bail Application. The first Bail Application has been allowed to be withdrawn by the Order dated 26th April 2024 passed in Bail Application No.1693 of 2024.

3. It is the submission of Mr. Bhavake, learned Counsel for the Applicant that the Applicant was arrested on 2nd April 2023, till date he is incarcerated. He submits that there is no progress in the

trial except framing of the Charge. He further submits that as far as the medical evidence is concerned, physical external injuries are not noted and therefore, the Applicant be granted bail.

4. On the other hand, learned APP submits that the offence is very serious. She submits that the age of the victim is 9 years, when the incident took place. She further submits that the Applicant was the neighbour and the Applicant subjected victim of 9 years to sexual assault. The Respondent-State has opposed this Bail Application by filing Affidavit-in-Reply of Mr. Ajit Rajaram Tike, Sub-Divisional Police Officer, City Division, Kolhapur, District-Kolhapur dated 26th November 2024. Learned APP also relied on the said Affidavit and submitted that therefore the Bail Application be rejected.

5. The prosecution case is set out in paragraph No.3 of the said Affidavit filed on behalf of State, which reads as under :

“On 02.04.2023 the victim had no school and having holiday to her school so she was present in her house along with the complainant. At that time the Applicant-accused Atul Prakash Kalkutaki came to their house and told her that he has better mobile

charger and so sent victim with him then he will give charger to her. So the complainant sent victim along with the Applicant-accused Atul Prakash Kalkutaki but after 15 minutes the victim did not come back from the house of Applicant-accused Atul Prakash Kalkutaki, so the complainant sent her son to see the victim. Son of the complainant returned back and stated that the Applicant-accused Atul Prakash Kalkutaki told him that he had sent victim to the shop. Hence, she went to the shop to see the victim, but she did not find. Hence, complainant returned back to the house and saw that the victim is present in the house. At that time victim is in a frightened condition and was crying. Hence, she enquired with victim, on that victim told that Applicant-accused Atul Prakash Kalkutaki took her to his house and thereafter took her to one room. Victim further stated that Applicant-accused Atul Prakash Kalkutaki took her near him and played with her person. When they were playing at that time Applicant-accused Atul Prakash Kalkutaki removed his clothes and also removed clothes of victim. At that time Applicant-accused Atul Prakash Kalkutaki kissed her lips, cheeks and stated to her that they would play a game and that she should not be frightened. Thereafter Applicant-accused Atul Prakash Kalkutaki inserted her penis in her vaginal. Thereafter also Applicant-accused

Atul Prakash Kalkutaki made her lie on her stomach and inserted his penis in her anus. Due to which she got lot of pain to that place hence she cried. At that time Applicant-accused Atul Prakash Kalkutaki threatened to the victim. Thereafter she returned back to her house.

Victim further stated that prior to 3 days of incident Applicant-accused Atul Prakash Kalkutaki had also inserted his penis in her mouth and also inserted his penis in her vagina. Thereafter complainant checked the private part and anus part of the victim and she found that the said parts were reddish. Hence, she visited to the police station and filed complaint against the Applicant-accused Atul Prakash Kalkutaki.”

6. Perusal of the record shows that the victim of 9 years has been subjected to sexual assault. The offence is under Sections 376, 377, 354, 506 of the Indian Penal Code and 3(1)(w) (i) (ii), 3(2) (v), 3(2) (va) 3(1)(u), 3(1)(e) of Atrocity Act and under Sections 4, 6, 8 and 12 of Protection of Children from Sexual Offences Act, 2012. The offence is very serious

7. Perusal of record further shows that both the Applicant and victim were staying in adjoining houses. The statement of victim has been recorded under Section 164 of Code of Criminal Procedure, 1973 and the victim has stated about sexual assault committed by the Applicant on her. Although the Medico-Legal Examination Report of Sexual Violence shows that there is no physical violence, however, the same supports the prosecution case regarding sexual assault. The Applicant has assaulted the victim on 30th March 2023 as well as on 2nd April 2023. The Medico-Legal Examination Report dated 2nd April 2023 of Sexual Violence clearly shows that there is recent forceful penetration.

8. Apart from that, it is required to be noted that both the victim and the Applicant are the residents of same locality and in fact their houses are adjoining to each other. Thus, there is likelihood of tampering of evidence.

9. Accordingly, no case is made out for grant of bail. The Bail Application is dismissed.

10. As the case involves sexual assault on the minor victim of 9 years, the learned Trial Court is requested to expeditiously dispose of the trial.

BHALCHANDRA
GOPAL DUSANE

(MADHAV J. JAMDAR, J.)

Digitally signed by
BHALCHANDRA
GOPAL DUSANE
Date: 2025.03.29
17:15:44 +0530