

Amberkar

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

**BAIL APPLICATION NO. 4060 OF 2024**

Muthaya Kesavan

.. Applicant

**Versus**

State of Maharashtra &amp; Anr.

.. Respondents

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- Mr. Tohid Shaikh i/by Ms. Anjali Patil for Applicant
- Ms. Megha S. Bajoria, APP for Respondent No. 1 – State
- Ms. Shamim Siddiqui a/w Ms. Pratima Gawade, Advocates for Respondent No. 2
- Mr. Raykar, PSI, Aarey Police Station

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 4, 2025

**P. C.:**

**1.** Heard Mr. Shaikh, learned Advocate for Applicant; Ms. Bajoria, learned APP for Respondent No. 1 – State and Ms. Siddiqui, learned Advocate for Respondent No. 2.

**2.** Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.PC.**") in connection with C.R. No. 88/2024 registered with Aarey Police Station for offences punishable under Sections 498(A), 376, 354, 506 and 506(2) r/w 34 of the Indian Penal Code, 1860 (for short, "**IPC**").

**3.** Applicant before me is the father-in-law of the prosecutrix victim who is arraigned as Respondent No. 2. FIR is lodged on

19.06.2024 which is appended at page No. 29 of the Application. *Prima facie* reading of the FIR shows that tenure of the two alleged incidents stated therein is from 01.09.2023 to 12.12.2023. However two incidents; one undated and one specifically dated (11.12.2023) are alleged in the FIR. The undated incident is *prima facie* inconclusive on the face of record. The dated incident when read in the version of the prosecutrix who is the first informant states that she was molested by Applicant inside the kitchen by bolting the door when by all other lady family members were present in the house. That apart though it is not stated in the FIR, but in another recorded statement of prosecutrix she has revealed that on the previous day, Applicant and prosecutrix had a quarrel on which date her maternal aunt was also present in the house. One of the reason which impels me to consider the Bail Application and reject submissions made by learned Advocate of prosecutrix are the preceding and precursor incidents in the present case. They are all suppressed by the prosecutrix. *Prima facie* it is seen that prosecutrix had specifically threatened the Applicant that she will file a molestation case (विनयभंगाची केस) against him which is evident from the Non-cognizable complaint (NC) which was lodged by the Applicant with the Police Station on 12.12.2023 copy of which is appended at page No. 87 of the Application. Thereafter another complaint was lodged by

Applicant against prosecutrix on 11.04.2024 which is appended at page No. 89 of the Application is a detailed complaint. Perusal of these two *prima facie* precursor incidents and complaints and two further complaints lodged by the family's Mediator who had arranged the marriage of the prosecutrix namely a person called Mr. Vyankatesh Naykar on 04.03.2024 and 22.03.2024 appended at page Nos. 102 and 100 of the Application against the prosecutrix threatening him with dire consequences is also something which echoes the conduct of the prosecutrix. The complaint filed on 04.03.2024 by the said Mr. Vyankatesh Naykar is against the mother of the prosecutrix. FIR is lodged on 19.06.2024 *prima facie* as a counterblast to the above four incidents, which are suppressed. *Prima facie* on reading the material on record, it is clear that prosecutrix has not approached the Court with clean hands. Statements of the prosecutrix are replete with infirmities and absurdities. There are other issues with respect to matrimonial disputes which are alleged by prosecutrix and to which Ms. Siddiqui has in her submissions made an oblique reference, the same are attempted to be interpolated and overlapped with the alleged case of molestation and attempt is made to invoke sympathy of the Court without addressing the main issue. The primary complaint which is filed incidentally is under the provisions of Sections 498A a/w 376 of IPC and other allied provisions of IPC as can be seen from the

FIR. The case of prosecutrix does not reveal any bonafides *prima facie* when the material and witness statements placed on record are seen and read qua the alleged molestation incident. There is an apparent dichotomy in the statements of the prosecutrix. She was admittedly pregnant at the time of the alleged specific incident (11.12.2023). Medical examination is inconclusive and does not support the prosecution case either. Needless to state that complicity of the Applicant can be proved by the prosecution at the time of trial. Applicant has made out a clear case for grant of bail. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs. 25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release

from jail to the concerned Police Station and also to the trial Court;

- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (vi) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not make any attempt to re-associate with the victim in any manner either through any device or in person;
- (ix) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(x) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

4. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

5. Bail Application is allowed and disposed.

[ MILIND N. JADHAV, J. ]

Amberkar

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by RAVINDRA  
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