

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

CRIMINAL BAIL APPLICATION NO. 4430 OF 2024

Mr. Giridhar Nathu Badhane. ... Applicant.
Vs.
The State of Maharashtra & Anr. ... Respondents.

Ms. Sangita Walke, Advocate for the Applicant(through V.C.).
Mr. Vinod Chate, APP for Respondent/State.
Ms. Sakshi S. Kadam, Advocate appointed for Respondent No.2

**CORAM : ASHWIN D.BHOBE, J.
DATE : 19th JUNE, 2025.**

P.C. :

1. Heard Ms. Sangita Walke, learned Advocate for the Applicant and Mr. Vinod Chate, learned APP for State. None appeared on behalf of Respondent No. 2, though served. Ms. Sakshi Kadam, learned Advocate is appointed by this Court to represent the Respondent No. 2.

2. By the present Application filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS"), the Applicant is seeking regular bail in Crime No. 190 of 2016

registered at Roha Police Station, Dist. Raigad for offence punishable under section 363, 366, 376 and 328 of the Indian Penal Code and u/s. 3(a) and 4 of the Protection of Children From Sexual Offences Act, 2012 (for short “POCSO Act”).

3. There are two accused in the present crime. Applicant is Accused No. 1 in the said crime.

4. Bail Application (at Exh. 3 in Special Case No. 61 of 2020) filed by the Applicant was rejected by the learned Special Judge, Mangaon, Dist. Raigad on 20th December, 2023.

5. The above said Crime was lodged by the grand-father of the Respondent No. 2 (Victim) aged 16 years 9 months. Case of the prosecution is that Applicant by promising to marry the Respondent No. 2, forced her to drink limca mixed with liquor and thereafter, forcibly committed sexual intercourse with the Respondent No. 1.

6. During the course of investigation, the Applicant was

arrested and Respondent No. 2 was found in his custody. It is contended that the Applicant by giving promise to marry eloped with the Respondent No. 2. During the said period, Respondent No. 2 was administered liquor in cold drink and thereafter, she was subjected to penetrative sexual assault.

7. Applicant was arrested on 27th September, 2016. Applicant was released on temporary bail by the learned Special Judge, Mangaon on 18th November, 2016. Applicant was released on the ground of his father's illness. Records indicate that the Applicant despite condition to surrender within a particular time, did not surrender. Applicant was absconding from the year 2016 until he was arrested by the police on 11th March, 2023.

8. Ms. Sangita Walke, learned Advocate for the Applicant submits that the Applicant has been falsely implicated in the case. She submits that the Applicant and Respondent No. 2 had love affair and the relationship between them was consensual. She submits that the Respondent No. 2 has been consistently

changing her statement. She submits that Respondent No. 2 was not found in the custody of the Applicant at the time of his arrest. She submits that the allegation of administering alcohol to the Respondent No. 2 is a false accusation. She submits that the Applicant though was released on temporary bail in the year 2016-2017, though the Applicant did not surrender, it cannot be said that the Applicant was absconding. She submits that the Applicant is now a family person with a minor son. She submits that Accused No. 2 who was also absconding like the Applicant is released on bail, as such the Applicant would be entitled to parity. She submits that the trial is delayed, delay cannot be attributed to the Applicant. For all the above said reasons, she submits that the Applicant be released on bail.

9. Mr. Vinod Chate, learned APP submits that the material on record clearly establishes the case of the Respondent No. 2 being subjected to penetrative sexual assault. He submits that the Applicant on an earlier occasion was released on temporary bail,

however, Applicant breached the condition of bail by not surrendering within the stipulated time. He submits that the Applicant was absconder, until the time he was arrested. He submits that the offence is against a minor and the charges are very serious in nature. He therefore, opposed for bail.

10. Ms. Sakshi Kadam, learned Advocate appointed for the Respondent No. 2 submits that the Respondent No. 2 on the date of offence was a minor of 16 years and 9 months and therefore, the question of her consent is immaterial. She submits that Respondent No. 2 in her statement recorded under Section 161 as well as under Section 164 of the Code of Criminal Procedure, 1973 are consistent and she has narrated in detail the forcible penetrative sexual assault committed by the Applicant. She placed reliance on the medical certificate to contend that the act of penetrative assault is opined in the medical certificate. She submits that the Applicant had in fact misled the Respondent No. 2 and taken advantage of the Respondent No.2 by

administering alcohol to the Respondent No. 2. She submits that the Applicant was absconder for a period of 5 years until he was arrested by the police and lodged in jail. She submits that in the fact and circumstances of the case, the Applicant cannot claim the ground of long incarceration. She submits that in event, the Applicant is released on bail, there is a threat to Respondent No. 2. She opposes the grant of bail.

11. I have perused the record with the able assistance of the learned Advocates and learned APP for State.

12. From the allegations in the FIR, on the date of offence Respondent No. 2 was 16 years and 9 months. Applicant was an adult. Medical reports of the Respondent No. 2 supports the claim of the Respondent No. 2 of being administered alcohol and she being assaulted (penetrative vaginal assault).

13. The act of the Applicant, prima facie falls within the definition of rape. The act of the Applicant as disclosed by the

Respondent No. 2, prima facie constitutes the offence. The Applicant has given the details of the incident in her statement recorded before the police as well as before the Magistrate under section 164 of the Cr. P.C.

14. Ms. Sangita Walke, learned Advocate for Applicant has raised contention of long incarceration and delay in the trial. In the normal situation, the contention of the Applicant could have been considered and tested in view of law of long incarceration. However, in the facts and circumstances of the present case, as rightly submitted by Ms. Sakshi Kadam, learned Advocate for the Respondent No. 2 and Mr. Vinod Chate, learned APP, conduct of the Applicant of violating the conditions of the temporary bail granted to him by refusing to surrender and enjoying the liberty for a period of almost 5 years, when the Applicant was required to be in custody, itself disentitles the Applicant to the ground as sought to be urged by the learned Advocate for the Applicant. Delay if any in the trial is attributable to the Applicant, as such

the Applicant is not entitled to raise the ground of delay in trial.

15. Conduct of the Applicant, as referred to hereinabove, indicates that the Applicant has no respect for law and the orders passed by the Court of Law, which dis-entitles the Applicant for discretionary relief.

16. Considering the material on record, this is not a fit case to enlarge the Applicant on bail.

17. Criminal Bail Application No. 4430 of 2025 is dismissed.

18. Ms. Sakshi Kadam has assisted this Court by espousing the cause of the Respondent No. 2. High Court Legal Services Committee, Mumbai is directed to pay fees of Ms. Sakshi Kadam as per rules. Same be done within a period of one week from today.

[ASHWIN D.BHOBE, J.]