

Ajay

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

BAIL APPLICATION NO. 4483 OF 2024

Mahesh Brijmohan Jaiswar

.. Applicant

Versus

State of Maharashtra and Anr.

.. Respondents

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- Mr. Abhinav Dubey a/w. Mr. Amit Tiwari and Mr. Akash Sonawale, Advocates for Applicant.
 - Ms. Shilpa Gajare - Dhumal, APP for Respondent No.1 – State.
 - PSI – Mr. Sawant, Goregaon Police Station present.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 06, 2025.

P.C.:

1. Heard Mr. Dubey, learned Advocate for Applicant and Ms. Gajare – Dhumal, learned APP for Respondent No.1 – State.

2. Present Bail Application is filed by Applicant for seeking regular bail in connection with Crime No.365 of 2024 registered with Goregaon Police Station for the offences punishable under Section 376(2)(n), 323 and 506 of the Indian Penal Code, 1860 (for short “IPC”).

3. Briefly stated, First Informant – victim is aged 22 years old at the time of incident. In May 2022 she was working since long as a tele-caller in the office of Applicant who was running a business of AC repairs by the name of ‘Aura Aircool’ from shop No.2/C, Building No.R-

01, Aasmi Complex, Ram Mandir Road, Goregaon (West), Mumbai. There were other staff members apart from the First Informant who were also working in the said office. Details and attendance sheet are appended at Exhibit "C" - from page Nos.105 onwards for the period 2022 onwards until the end of December, 2023.

4. First Information Report (FIR) is lodged on 04.05.2024. According to First Informant, between 01.05.2022 and 01.12.2023 i.e. the tenure of approximately 19 months, Applicant repeatedly and on multiple occasions without giving the details of the number of days / times considering the aforesaid tenure kept intimate physical relationship with her in the aforesaid office premises when none of the other staff members used to be present in the office. Such is the complaint lodged by the Applicant appended at page Nos.36 and 37 of the Bail Application.

5. The only two issues stated in the complaint are that after the date of the first incident having occurred on 01.05.2022 in the afternoon, First Informant refused to attend the office at her job, but within 4 days Applicant visited her residence and convinced her and talked into her to resume work and she agreed. Thereafter First Informant attended the office of the Applicant and for the next one and half years, she has alleged that the aforesaid incidents repeatedly took place several times. This long duration clearly establishes

consensus of the Complainant as there is no promise.

6. The second issue stated in the complaint is that on 01.12.2023, First Informant only after having confided and having consultation with her friend Omkar Beloshe and her mother decided to lodge FIR.

7. Ironically FIR is filed on 04.05.2024. The delay is unexplained. There is a stoic silence for more than 4 months by the Complainant. The aforesaid timeline and the fact that during the interregnum not once the First Informant raised any complaint or grievance whatsoever against Applicant as also the fact that First Informant resumed her duty all throughout the aforesaid period is clearly evident from Exhibit "C" appended to the Bail Application, the consensus of the Complainant is clearly seen.

8. Though, Ms. Gajare - Dhumal, learned APP has drawn my attention to the provisions of Section 439 of the Cr.PC. wherein she would submit that in the present case considering the offence which is punishable for a period of upto 7 years and triable by the Court of Sessions, Court would be required to issue notice to the First Informant.

9. With the able assistance of the learned APP, I have perused Section 439 of the Cr.PC. Section 439 of the Cr.P.C. reads thus:-

“439. Special powers of High Court or Court of Session regarding bail.- (1) A High Court or Court of Session may direct
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(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in Sub-Section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that Sub-Section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified;

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.

[(1-A) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”

10. From the above, it is seen that second proviso of Sub-Section 1 states that before granting bail to a person who is accused of an offence triable under the provisions of Section 376(3), 376-AB, 376-DA and 376-DB of the IPC, High Court shall give notice of the Application for bail to the Public Prosecutor and the Informant / representative. In the present case, the offence is registered under Section 376(2)(n) i.e.

committing the act on the same person. In this case, the tenure is for 19 months. Complainant is 22 years old. Their relationship was going on for 19 months. Moreover, to keep physical relationship or not is a choice of both the parties. *Prima facie*, it does not appear from the record that the Complainant was either forced to keep sexual relationship or she was really induced to such an extent that she had no other option but to keep physical relationship with Applicant / Accused. The Complainant is an educated girl and it shows that it was her conscious decision to keep sexual relations with Applicant / Accused. *Prima facie*, at this stage, possibility of noncommittal, consensual relationship cannot be denied.

11. Having heard the learned APP at length and perused the record. The facts of the present case placed before me persuade me to allow the present Bail Application.

12. Hence, the following order:-

- (i) Applicant – Mahesh Brijmohan Jaiswar is directed to be immediately released from prison in connection with FIR No.365 of 2024;
- (ii) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs.50,000/- (Rs. Fifty Thousand only) with one surety of the like amount;
- (iii) Applicant shall report to the Investigating Officer at

Goregaon Police Station, once every month on the first Monday of the month between 10:00 a.m. to 12:00 p.m.;

- (iv) 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 revocation of this order;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (ix) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable; and
- (x) Any infraction of the conditions shall entail cancellation of bail granted to the Applicant.

13. Bail Application is allowed and disposed of in the above terms.

[MILIND N. JADHAV, J.]

Ajay