



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4032 OF 2023

XXX	D	...Applicant
<i>Versus</i>		
The State of Maharashtra		...Respondent

Mr. Sohan Gunjal a/w. Mr. Vaibhav Kulkarni, Advocate for the Applicant.
Mr. P. H. Gaikwad, APP for the Respondent-State.
Mr. Rohit Kumar, Advocate for the Respondent No.2.
Mr. Kuldeep Nikam, Amicus Curiae.
Mr. S. B. Kadam, PSI, Sangavi, Pimpri-Chinchwad Police Station present.
Ms.YYY, Respondent No.2 present in person.

CORAM : MADHAV J. JAMDAR, J.

DATED : 24th JANUARY 2024

P. C.

1. Heard Mr. Kuldeep Nikam, learned Amicus Curiae, Mr. Sohan Gunjal, learned Advocate appearing for the Applicant, Mr. P. H. Gaikwad, learned APP appearing for the Respondent No.1-State and Mr. Rohit Kumar, learned Advocate appearing for the Respondent No.2.
2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1.	C. R. No.	509 of 2022
2.	Name of Police Station	Sangavi, Pimpri-Chinchwad Police Station, Pune
3.	Date of Incident	05/06/2020
4.	Date of Registration of F.I.R.	09/11/2022 at 4.05 p.m.
5.	Date of Arrest	09/11/2022 at 4.30 p.m.
6.	Section/s invoked	354, 323, 506 of the I.P.C., 1860 and 3, 4, 7, 9(g) and 10 of the POCSO Act, 2012.
7.	Date of granting bail under Section 439 of the Cr.P.C. by the learned Additional Sessions Judge, Pune	09/12/2022
8.	Date of filing Charge-sheet	05/01/2023
9.	Date of order passed by the learned Additional Sessions Judge, Pune cancelling bail	05/07/2023

3. The present Bail Application is filed in the following circumstances.

(i) The Respondent No.2 is Police Constable attached to Vakad Police Station, Pune. The Respondent No.2 lodged an F.I.R. dated 9th November 2022 concerning the alleged offence which has allegedly occurred on 5th June 2020. It appears that the offence came to be registered on 9th November 2022 at 4.05 p.m. at Sangavi Police Station, Pimpri-Chinchwad and at 4.30 p.m., i.e. within 25 minutes of

the registration of the crime, the present Applicant was apprehended. Learned Additional Sessions Judge, Pune by Order dated 10th November 2022 passed below remand report in C.R. No.509 of 2022 of Sangavi Police Station has observed as under:-

“The accused submitted that, the informant is his legally wedded wife and the alleged victim girl is their real daughter. The marriage was solemnised in the year 2010. The informant wife is serving in the Police Department as Police Naik. For last four years due to disturbances, they are residing separately. He is working as driver and he own a car.

On enquiry with the Investigating Officer pertaining to non recording of the statement of victim girl before arrest of the accused, it was only submitted that, the offence is serious, the informant agitated and therefore, accused came to be arrested immediately.

Considering the totality of the circumstances, there is no justification at all for the delay in lodging of the report which is around 30 months. The informant is not uneducated lady but she herself is in police department. In such backdrop the unexplained and unjustified delay of 30 months cannot be ignored.

So also, the relationship between the parties also needs to be taken into account. The victim girl with whom the alleged incident took place is the real daughter of

accused.

The reasons that is recording the statement of victim girl and conducting the spot panchanama, in themselves are not enough to warrant police custody of the accused in the aforesaid circumstances.

In the nature of above peculiar circumstances, though the alleged offences may be of serious nature, the accused is taken in MCR till 24.11.2022”.

(Emphasis added)

(ii) Thereafter, the learned Additional Sessions Judge and District Judge-11 passed Order dated 9th December 2022 below Exhibit-1 in Bail Application No.7563 of 2022 granting bail to the present Applicant. The relevant part of the said Order is as under:-

*“11. As per the record, it is seen that, **the offence came to be registered on 09.11.2022 at 4.05 p.m. at Sangavi Police Station, Pimpri-Chinchwad Pune. The accused resident of Mouje Veeta, Taluka Khanapur, District Sangli came to be arrested on the same day at 4.30 p.m. i.e. within 25 minutes of the registration of crime. Most interesting, till production of the accused in remand before the Court, the statement of the victim girl was not recorded. This shows the alacrity to arrest the accused and to detain him.***

12. As per the order on remand application dated 10.11.2022 it is recorded that, there is no justification for the delay of 30 months in registering the offence though the informant herself is in police department and the unexplained delay cannot be ignored and so police custody was rejected and accused was taken in M.C.R.

13. On 14.11.2022 the present application for bail came to be moved.

14. The chronology of the events as above suggest the alacrity in arresting the accused though there was 30 months unexplained delay on the part of informant in lodging the report. The contention of accused is misuse of official position by the informant being in the Police Department. Non filing of report in spite of receiving the copy of bail application by the APP on 16.11.2022, till date lends support to the contention of accused that, in collusion with the informant the non applicant police station is delaying filing of report to harass the applicant.

15. If there is substance, in the contention of accused, informant has succeeded in not only booking the accused in crime but also getting him detained in jail for around one month.

16. Under the aforesaid circumstances, the oral request of the Ld. APP to grant one more date for seeking the report from concerned police station will amount to

encouraging same practices.

17. The personal liberty of the accused is curtailed and he is detained for a month without his matter being heard for want of the report by the non applicant police station. The personal liberty of the applicant cannot be permitted to be jeo-paradised in such way and accordingly following order is passed.

ORDER

1. Application (Exh.1) is allowed.

2. Applicant viz. Sandip Shashikant Bhingardive be released on executing P.R. bond of Rs.15,000/- along with one surety of the like amount on the following conditions:-

(a) He shall not hamper or tamper the prosecution evidence.

(b) He shall not commit any offence while on bail.

(c) He shall produce his Aadhar Card, any document of permanent address as well as Mobile number, if any to disclose his permanent place of residence, at the time of furnishing surety in the court.

(d) He shall not repeat any such act with the victim girl, failing which the present bail may be withdrawn.

3. Breach of any condition of bail would be liable for cancellation of liberty given.

4. Bail before remand court.

(Emphasis added)

(iii) The Respondent No.2 i.e. original Complainant/Informant filed an Application bearing Exhibit-4 in said Special POCSO Case No.28 of 2023 seeking cancellation of bail granted to the Accused on the ground that the Applicant being released on bail is pressurising and threatening the original Complainant and is also following the victim i.e. daughter of the Applicant and the original Complainant. By Order dated 5th July 2023, the said Application was allowed and the bail granted to the Applicant by Order dated 9th December 2022 was cancelled and an N.B.W. has been issued against the Applicant. Accordingly, the Applicant has been taken into custody on 1st August 2023.

4. This Bail Application under Section 439 of Cr.P.C. is filed on 4th December 2023. A learned Single Judge (M. S. Karnik, J.) by order dated 19th December 2023 issued notice to the Respondent No.2 and made the same returnable on 4th January 2024.

5. This matter was first heard by this Court on 4th January 2024 and as learned Advocate appearing for the Respondent No.2 sought time to file affidavit, time was granted till 11th January 2024. The matter was kept on 12th January 2024 and on 12th January 2024, the

affidavit-in-reply was tendered by the learned Advocate appearing for the Respondent No.2 and the matter was kept on 15th January 2024. On 15th January 2024, due to paucity of time, the matter could not be taken up for hearing and therefore, the same was stood over to 24th January 2024. However, learned Advocate appearing for the Applicant thereafter moved circulation praecipe and accordingly, the same was kept on 22nd January 2024.

6. On 22nd January 2024 the matter was substantially heard. After hearing Mr. Sohan Gunjal, Advocate appearing for the Applicant and Mr. Rohit Kumar, learned Advocate appearing for the Respondent No.2, this Court found that there is some material to show that Mr. Rohit Kumar, learned Advocate may not be able to appear in the matter. As prima facie, the material on record indicated that Mr. Rohit Kumar, learned Advocate appearing for the Respondent No.2 may not be able to appear in the matter, by Order dated 22nd January 2024, I have appointed Mr. Kuldeep Nikam, learned Advocate of this Court as Amicus Curiae to assist the Court on the said issue and kept the matter on 24th January 2024 at 2.30 p.m.

7. Mr. Kuldeep Nikam, learned Amicus Curiae to assist the Court today submitted the relevant dates and events in tabular form, which

read as under:-

Sr.	Date	Events
1	27/10/2022	<p>Applicant/Accused gave his written complaint to Senior P.I. Sangvi Police Station against the present complainant, her motherZZZ, father and person having Suzuki vehicle (vehicle registration number is that of Advocate Rohit Kumar's Vehicle) thereby alleging to have threats to the Applicant / Accused from these persons.</p> <p>Pursuant to the said written complaint, statement of Applicant / Accused as well as Adv. Rohit Kumar came to be recorded by the concerned Police and considering the documents produced by the said Adv. Rohit Kumar reflecting his stay at Hyderabad during the relevant time of alleged offence at Pune, the investigating agency closed the said complaint.</p> <p>(Page Nos. 51 to 67 to the compilation of the complainant).</p>
2	09/11/2022	Subject FIR No. 509 of 2022 was lodged by Complainant u/s. 354, 323, 506 of I.P.C. and Section 3, 4 and 7, 9(g) and 10 of POCSO Act, 2012.
3	05/01/2023	Charge sheet came to be filed.

4	09/12/2022	The Bail Application filed by the present Applicant Sandip was allowed by the Ld. Additional Sessions Judge, Pune.
5	28/02/2023	<p>The original complainant filed an application for cancellation of the bail granted to the Applicant / Accused.</p> <p>The present Advocate Rohit Kumar appeared on behalf of the complainant.</p>
6	28/02/2023 04/03/2023	<p>The present Advocate Rohit Kumar lodged N.C. against the present Applicant / Accused alleging that the Applicant / Accused had threatened him.</p> <p>(Page: 113 and 115 of compilation of the complainant).</p>
7	10/03/2023	<p>The wife of present Advocate Rohit Kumar who is also an advocate filed an FIR bearing No. 87 of 2023 with Khadki Police Station against the Applicant / Accused (Apparently named is wrongly mentioned in the FIR) u/s. 509 and 506 of Indian Penal Code, 1860 alleging that the Applicant / Accused had threatened her and her husband on phone.</p> <p>(Page: 117 of compilation of complainant).</p>

8	01/07/2023	<p>Present Advocate Rohit Kumar lodges N.C. against Applicant / Accused with Khadki Police Station thereby alleging about the threatening calls from the Applicant / Accused.</p> <p>(Page No. 123 of compilation of complainant).</p> <p>Page Nos. 127 to 147 the transcript of conversation between Applicant / Accused with the present Advocate Rohit Kumar is annexed at Page Nos. 127 to 148 of the compilation of complainant.</p>
9	22/06/2023	<p>The mother of the complainant ZZZ lodges N.C. against the present Advocate Rohit Kumar (although the middle name is different, however the address and mobile number is of Adv. Rohit Kumar) thereby alleging verbal abuse by Mr. Rohit Kumar.</p> <p>(Page No. 105 of Bail Application.)</p>
10	05/07/23	<p>The Bail granted to the Applicant / Accused was cancelled by the Additional Sessions Judge, Pune.</p>
11	02/08/2023	<p>The Applicant /Accused filed an application seeking bail before the Ld. Additional Sessions Judge, Pune. Para No. 3 of the said application alleges that the complainant and her advocate have filed fake N.C. just to create fake cases or records in the name of Accused.</p>

		(Page No. 91 to the Bail Application).
12	12/09/2023	Complainant filed her reply to the said subsequent Bail Application of the Accused through Advocate Mr. Rohit Kumar. (At Page No. 93 to the Bail Application).
13	30/10/2023	The Bail Application of the Applicant / Accused was rejected against which the present proceeding is filed before this Hon'ble Court.
14	11/01/2024	The Affidavit in the name of mother of the Complainant got notarized wherein it is stated that the person who was mentioned in her previous N.C. dated 22/06/2023 was not the present Advocate Mr. Rohit Kumar. (Page No. 151 to the compilation of complainant).

8. Mr. Kuldeep Nikam, learned Amicus Curiae pointed out Rule 13 and Rule 15 of the Chapter 2 of the Bar Council of India Rules. The said Rules read as under:-

“13. An advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness, and if being engaged in a case, it becomes

apparent that he is a witness on a material question of fact, he should not continue to appear as an Advocate if he can retire without jeopardising his client's interests.

15. It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence”.

9. Mr. Kuldeep Nikam, learned Amicus Curiae in the facts and circumstances of this case and on the basis of above Rules 13 and 15 submitted that it will not be proper for Mr. Rohit Kumar to represent the Respondent No.2.

10. As noted hereinabove, prima facie, the material on record indicated that Mr. Rohit Kumar, learned Advocate appearing for the Respondent No.2 may not be able to appear in the matter, by Order dated 22nd January 2024, I have appointed Mr. Kuldeep Nikam, learned Advocate of this Court as Amicus Curiae to assist the Court on the said issue and kept the matter on 24th January 2024 at 2.30 p.m. It is to be noted that the said Advocate Rohit Kumar by email

submitted an Application dated 23rd January 2024 at 9.49 p.m. with the Hon'ble the Chief Justice seeking transfer of hearing of the present Bail Application to another learned Single Judge of this Court. The Hon'ble the Chief Justice vide Administrative Order dated 24th January 2024 directed to place the present Criminal Bail Application as per roster i.e. the present assignment of this Court. Accordingly, the matter is heard today by this Court.

11. It is shocking to note certain aspects of the matter:-

(i) In this case, mother of Respondent

No.2 has lodged N.C. on 22nd June 2023 against one Rohit Ramchandra Kumar, residing at "Mantri Kinara", Dapodi. The mobile number mentioned in said N.C. is that of Advocate Rohit Kumar. In the said N.C., it is mentioned that said Rohit Ramchandra Kumar tried to physically assault her, abused her as well as threatened her that he would kill her.

(ii) It is shocking to note that an affidavit dated 11th January 2024 is tendered in this Court by Advocate Rohit Kumar on 12th January 2024 appearing for the Respondent No.2 of saidZZZ,

the mother of the Respondent No.2. The affidavit

states that some other person has threatened her mentioning his

name as Advocate Rohit Ramchandra Kumar and the daughter i.e. Respondent No.2 has shown the face of Advocate Rohit Kumar on Whats APP video and therefore, the said ZZZ realised that the said Advocate Rohit Kumar has not threatened her. The relevant portion of the said affidavit is as follows:-

....So, I decided to file the complaint with Sanghvi police immediately based on my belief to protect my daughter and granddaughter.

But now, when approached on 1st January 2024 by my daughter and being shown the face of real Advocate Rohit Kumar on WhatsApp video, I am shocked know, he is not the person who actually approached me. It was some unidentified person, seems to meet me to instigate me to file complaint against Advocate Rohit Kumar and to create a scenario to show there is a design of falsehood and suspicion on my and my daughter's character and destroy our reputation and that of Advocate Rohit Kumar who now I know has been representing my daughter pro bono and his wife has helped us from the day when Sanghvi police had declined to file POCSO case due to delay in reporting and she had personally visited the then Senior Police Inspector to convince there is no effect of delay and complaint could still be filed.

Also, the complaint also has missing details of the person who approached me, had that been also recorded, it would have clarified things in itself.

Whatever stated above is true and correct to the best of my knowledge, belief and information and hence signed hereunder on this 9th day of January 2024 at Pune

I know the affiant”

(Emphasis added)

(iii) It is shocking to note that the said affidavit is not affirmed by said ZZZ and the same has been affirmed by the present Respondent No.2 impersonating as ZZZ. The Respondent No.2 has been identified by Advocate Rohit Kumar asZZZbefore the Notary.

(iv) The Respondent No.2 is present in Court and she has submitted in writing that instead of signature of mother, she has put her signature in hurry. The said writing is taken on record and marked 'X' for identification.

12. This is a very serious case. Prima facie, the conduct of the Respondent No.2 and the conduct of the learned Advocate Rohit Kumar amounts to interference in the administration of justice as false and fabricated affidavit is filed to oppose the grant of bail to the

Applicant.

13. The Respondent No.2 and Mr. Rohit Kumar, learned Advocate appearing for Respondent No.2 seek time to file affidavit-in-reply. Accordingly, the said affidavits be filed on or before 30th January 2024. As the case is very serious, Respondent No.1-State of Maharashtra shall also file affidavit on or before 30th January 2024.

14. However, as far as the Application for bail is concerned, it is to be seen that there are certain WhatsApp messages on the basis of which, the bail granted to the present Applicant has been cancelled. However, perusal of some of the WhatsApp messages shows that it is Advocate Rohit Kumar who was visiting the house of Respondent No.2 and the persons in the society were informing the Applicant about the same. It is true that some WhatsApp messages are containing indecent language and threatened to Advocate Rohit Kumar warning him not to visit his house. However, it is to be seen that learned Additional Sessions Judge, Pune who while granting M.C.R. by Order dated 10th November 2022 and while granting regular bail by Order dated 9th December 2022 have observed that by misusing the official position of Respondent No.2 as Police Constable in Police Department, the F.I.R. has been registered and the Applicant

was immediately apprehended. It is further significant to note that the mother of the Respondent No.2 herself has filed N.C. against Advocate Rohit Kumar stating that he tried to physically assault her, abused her, as well as threatened her that he would kill her. It is shocking to note that the Respondent No.2 has impersonated before Notary as ZZZ and Advocate Rohit Kumar has identified the Respondent No.2 as mother of the Respondent No.2 before the Notary. Such fraudulent document is produced before this Court to support the case of cancellation of bail of the Applicant. Thus, prima facie, there is every possibility that the material is created in such a manner or the Applicant is put in such a condition that he would send some messages so that bail granted to him would be cancelled. Accordingly, till further orders the Applicant is entitled to be released on temporary bail.

15. Mr. Sohan Gunjal, learned Advocate appearing for the Applicant states that as complainant and victim are residing at Pune, the Applicant will therefore not reside within District-Pune and that the Applicant will reside at his native place at Vita, Taluka- Khanapur, District-Sangli.

16. The Applicant does not appear to be at risk of flight.

17. Accordingly, the Applicant can be enlarged on bail by imposing conditions. In view thereof, the following order:-

ORDER

(a) The Applicant-XXX

be released on bail in connection with C. R. No.509 of 2022 registered with the Sangavi, Pimpri-Chinchwad Police Station, Taluka-Pimpri-Chinchwad, District-Pune on his furnishing P. R. Bond of Rs.10,000/- with one or two sureties in the like amount.

(b) The Applicant shall not enter the Pune District after being released on bail, except for reporting to the Investigating Officer, if called and for attending the trial.

(c) On being released on bail, the Applicant shall reside at his native place at Vita, Taluka- Khanapur, District-Sangli till further orders.

(d) The Applicant shall report to the Vita Police Station, Taluka-Khanapur, District-Sangli twice every week i.e. on Sunday between 11.00 a.m. and 1.00 p.m. and on Wednesday between 11.00 a.m. and 1.00 p.m. till further orders. The Police Inspector of Vita Police Station,

Taluka-Khanapur, District-Sangli to communicate details thereof to the Investigating Officer.

(e) 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.

(f) The Applicant shall not tamper with the evidence and shall not contact or influence the Complainant or any witnesses in any manner.

(g) The Applicant shall attend the trial regularly.

(h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

18. The Respondent No.2, Advocate Rohit Kumar and Respondent No.1-State of Maharashtra shall file affidavit on or before 30th January 2024.

19. Stand over to 2nd February 2024.

[MADHAV J. JAMDAR, J.]