

AGK

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

BAIL APPLICATION NO.350 OF 2024

Manoj @ Annu Bhoja Bhangera	... Applicant
V/s.	
The State of Maharashtra	... Respondent

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Mr. Abhijit S. Singh for the applicant.

Ms. Supriya Kak, APP for the respondent-State.

Mr. Sachin Tambe, MIDC Police Station, Mumbai, is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 16, 2025

P.C.:

1. This is a bail application filed under Section 439 of the Code of Criminal Procedure, 1973. The applicant is seeking his release on bail in connection with Crime Register No.59 of 2023 registered at MIDC Police Station, for the offences punishable under Sections 376, 377, and 354 of the Indian Penal Code.

2. As per the prosecution's case, the prosecutrix resides along with her brother. On 23rd January 2023, around 12:30 in the afternoon, while the prosecutrix was watching television at home, the applicant came to her house. He informed her that there was garbage stuck in her water pipeline and that he had come to clean it. Believing him, the prosecutrix permitted him to enter and closed the door. The prosecution alleges that the applicant

thereafter showed inappropriate videos on his mobile phone to the prosecutrix. When she objected to it, the applicant allegedly removed her clothes forcefully and committed sexual assault on her. It is stated that although the prosecutrix shouted for help, her voice could not be heard by the neighbours due to a banjo playing outside the building. The applicant is said to have opened the door only when the prosecutrix's brother returned home. When inquired, the applicant stated that he had entered the house to clean the pipeline. The brother, on learning the incident from the prosecutrix, lodged the report at the police station.

3. The applicant was arrested the next day, i.e., on 24th January 2023. He had earlier moved an application for bail before the learned Sessions Court, which was rejected. Hence, the present application is filed before this Court seeking his release on bail.

4. The learned Advocate appearing for the applicant submits that on reading the contents of the FIR and the statements of witnesses including the neighbours, it does not appear to be a case of forceful sexual intercourse. He submits that there is no evidence of physical force being used, as no injuries are found on the body of the prosecutrix in the medical examination. It is further submitted that the applicant has been in jail since 24th January 2023 and has undergone incarceration of more than two and a half years. Though charges were framed in November 2024, the trial has not progressed as the examination of witnesses is still pending. The prosecution has listed around 29 witnesses, and the trial is likely to take further time for completion. He assures that the applicant will not enter the premises where the prosecutrix

resides and will abide by any conditions imposed by the Court.

5. On the other hand, the learned Additional Public Prosecutor opposes the grant of bail. She relies on the report of the psychologist as well as statements of neighbours to argue that the prosecutrix is naive and vulnerable. She points out that the prosecutrix had studied in a special school, as recorded in the psychologist's assessment, indicating limited understanding and capability to give informed consent. The learned APP further submits that the prosecutrix's narration, her brother's statement, and the immediate lodging of FIR all suggest absence of consent. She submits that the ingredients of the alleged offences are clearly made out and, therefore, the application for bail may be rejected.

6. I have perused the charge-sheet as well as the statement of the prosecutrix, who is a 33-year-old woman, and the applicant, who is approximately 35 years of age. It is not in dispute that both the prosecutrix and the applicant reside in the same building. From the medical examination report on record, there is no indication of physical injuries, nor are there any signs that suggest use of force, resistance, or coercion.

7. The prosecution has contended that the applicant took advantage of the mental condition of the prosecutrix. However, this Court has carefully gone through the report of the psychologist, which reveals that the prosecutrix was able to answer questions appropriately and understood the queries put to her. Though the neighbours have stated in their statements that the prosecutrix is 'naive', that, by itself, is not sufficient at this stage to

conclusively determine her mental incapacity or her ability to give free and informed consent.

8. The issue as to whether the prosecutrix, due to any alleged mental limitations, was incapable of understanding the nature and consequences of her actions, or whether her consent was vitiated, is a matter which would require detailed evaluation during trial. At this stage, such factual determination would fall within the domain of the learned Trial Court.

9. The applicant has already undergone incarceration for more than two and a half years since his arrest on 24 January 2023. There is nothing on record to suggest that he poses a flight risk or that he has attempted to tamper with evidence or influence any witness during the period of custody. The charges were framed in November 2024, yet the trial is still pending and the list of witnesses is substantial.

10. Considering the overall circumstances of the case, including the period of pre-trial detention, the nature of allegations, the fact that the medical report does not indicate forcible assault, and the requirement of a full-fledged trial to assess the issue of consent in light of the prosecutrix's mental capacity, I am of the opinion that the applicant has made out a case for grant of bail, subject to strict conditions.

11. In view of the above discussion, the following order is passed: The applicant is directed to be released on bail in connection with Crime Register No. 59 of 2023 registered with MIDC Police Station for the offences punishable under Sections

376, 377, and 354 of the Indian Penal Code, upon furnishing a personal bond of ₹25,000/- (Rupees Twenty-Five Thousand only) with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court, subject to the following conditions:

- (a) The applicant shall not tamper with the evidence or attempt to contact or influence any witness, directly or indirectly.
- (b) The applicant shall appear before the Trial Court regularly on each and every date of hearing unless prevented by sufficient cause.
- (c) The applicant shall not leave the territorial jurisdiction of the Trial Court without prior written permission.
- (d) The applicant shall not commit any offence or indulge in any criminal activity during the pendency of the trial.
- (e) The applicant shall not enter the locality where the prosecutrix resides and shall maintain a minimum distance of 500 meters from the place of the alleged incident.

12. Accordingly, the bail application stands disposed of in the above terms. No order as to costs.

(AMIT BORKAR, J.)