

VRJ

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

BAIL APPLICATION NO.493 OF 2024

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Yogesh Manoj Potdar

... Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Hasan Sayed with Mr. Raj Bhosale, Ms. S. Sayed and Mr. Arif Z. Khan i/by Arif Z. Khan & Co. for the applicant.

Ms. Mahalaxmi Ganapathy, APP for the State-respondent No.1.

Ms. Aneesa Cheema for respondent No.2 (Appointed as Legal Aid Counsel).

Mr. Prakash B., PSI, Meghwadi Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 27, 2025

P.C.:

1. This is an application preferred by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail in connection with FIR No.24 of 2023, registered with Meghwadi Police Station, for the offences punishable under Sections 376 and 376(2)(n) of the Indian Penal Code, 1860.

2. As per the case of the prosecution, the applicant and the victim were in a relationship from 28 August 2021 till 11 January

2023. During this period, the applicant is alleged to have committed repeated sexual intercourse with the victim under the pretext of marriage. The victim was aged about 31 years and the applicant was around 34 years of age at the relevant time. It is further alleged that though the applicant had even proceeded to get engaged with the victim and marriage preparations had commenced, he subsequently refused to marry her, which, according to the prosecution, amounts to an offence under Section 376(2)(n) of the IPC.

3. On the other hand, the learned APP for the State as well as the learned counsel appointed to represent the victim have opposed the application. It is contended that the consent of the victim was obtained by the applicant through a false promise of marriage. It is further submitted that when such promise is not made with genuine intent but only as a tool to obtain consent for sexual relations, then such consent loses its legal sanctity and is no consent in the eyes of law. On this premise, they urge that the applicant's conduct squarely attracts the offence punishable under Section 376(2)(n) of IPC.

4. I have perused the charge sheet as well as the statements of the victim recorded during the course of investigation, including her supplementary statement. On close scrutiny, it is seen that the relationship between the applicant and the victim was consensual in nature and lasted for a considerable period of more than one year. The record indicates that during this period, the victim accompanied the applicant at various places, and there is no prima facie material placed on record to suggest that the applicant ever

used force or coercion upon the victim. It further appears that both the parties had voluntarily got engaged and were preparing for marriage. The present FIR came to be lodged only after the relationship soured and the applicant eventually declined to marry the victim.

5. In such circumstances, at this prima facie stage, there is nothing to show that from the inception the applicant never intended to marry the victim. The fact that the engagement and marriage preparations took place suggests otherwise. Whether the promise to marry was false from the beginning or the relationship later turned sour due to other reasons is a matter of trial. At this stage, it cannot be conclusively held that the promise was made only to deceive the victim. Therefore, the essential ingredients required to attract Section 376(2)(n) IPC do not appear to be fully satisfied at this stage.

6. The applicant has been in custody since his arrest. Investigation is complete and charge sheet is already filed. Therefore, his further incarceration is not necessary for the purpose of investigation. There is nothing on record to indicate that the applicant is likely to abscond or tamper with evidence or influence the victim, if released on bail.

7. Considering the totality of the facts and circumstances of the case, the nature of allegations, the consensual nature of the relationship, and the fact that the matter requires trial, this Court is of the opinion that the applicant deserves to be released on bail, subject to certain conditions.

8. Hence, the following order is passed:

i. The applicant Yogesh Manoj Potdar is directed to be released on bail in connection with FIR No.24 of 2023, registered with Meghwadi Police Station for offences punishable under Sections 376 and 376(2)(n) of the Indian Penal Code, 1860, upon furnishing cash sureties of Rs.25,000/- (Rupees Twenty Five Thousand Only) and executing a Personal Recognizance (PR.) Bond in the like amount, within a period of six weeks from the date of his release, subject to the following conditions:

ii. The applicant shall not tamper with the evidence or attempt to influence any witnesses in any manner.

iii. The applicant shall regularly remain present before the Trial Court on every date of hearing, unless prevented by sufficient and justifiable cause.

iv. The applicant shall not leave the territorial jurisdiction of the concerned Trial Court without obtaining prior permission.

v. The applicant shall not, in any manner, contact the victim's family members, directly or indirectly.

vi. The applicant shall not commit any offence or indulge in any criminal activity during the pendency of the trial.

9. The bail application stands disposed of in the aforesaid terms.

(AMIT BORKAR, J.)