

Shabnoor

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

BAIL APPLICATION NO. 1815 OF 2024

SHABNOOR
AYUB
PATHAN

Digitally signed
by SHABNOOR
AYUB PATHAN
Date: 2025.07.29
16:02:59 +0530

Ravi Santosh Shil	... Applicant
V/s.	
State of Maharashtra & Anr.	... Respondents

Ms. Anjali Patil a/w Mr. Tohid Shaikh, for the applicant.

Mr. Sagar R. Agarkar, APP for the State – respondent No.1.

Mr. Viral Mukte i/b Mr. Vikas A. Tiwari, for respondent No.2.

Mr. G. N. Gaikwad, PSI, Dharavi Police Station.

CORAM : AMIT BORKAR, J.

DATED : JULY 29, 2025

P.C.:

1. The applicant has filed this bail application under Section 439 of the Criminal Procedure Code, 1973, seeking bail in Crime Register No. 934 of 2023 registered at Dharavi Police Station. The applicant faces charges under Sections 376(2)(f), 376(2)(n), 376(A)(B) of the Indian Penal Code, 1860, and Sections 4, 6, 8 and 10 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. According to the prosecution case, the complainant is an NGO called *Rabaru, Breaking Silence Foundation* which conducts

awareness programs in schools and organizations. On 27th November 2023, the NGO's representative conducted an awareness program at a school in Matunga, Mumbai for 5th and 6th standard students. During this program, a 12-year and 2-month-old girl told the NGO representative that her uncle had physically assaulted her. The victim girl revealed that this uncle is her maternal aunt's husband. She also disclosed that her younger sister, aged 10 years, was also sexually assaulted by the same uncle. Based on this disclosure, the NGO filed the complaint. The applicant had earlier applied for bail before the Sessions Court, which was rejected. Being aggrieved by this rejection, the applicant has now filed the present application.

3. The learned Advocate for the applicant argued that the First Information Report (FIR) was filed after a delay of about three years. He further argued that the statements recorded under Section 164 of the Criminal Procedure Code, 1973 do not mention any specific acts of penetrative sexual assault. The applicant was arrested on 15th December 2023, and charges have not yet been framed. The prosecution has listed 13 witnesses, which means the trial will not finish soon. The applicant has no previous criminal record. Therefore, the applicant should be granted bail.

4. The learned Additional Public Prosecutor opposed the bail application, stating that the victims were only 8 to 9 years old when the incidents occurred. He argued that the statements recorded under Section 161 of the Criminal Procedure Code, 1973 clearly mention specific acts of penetrative sexual assault. However, in the statements recorded under Section 164 of CrPC,

the victims have described the incident as inappropriate or "bad touch" by the applicant. The learned APP further argued that considering the serious nature of the alleged offence, the delay in filing the FIR cannot be considered unjustified in such cases. He submitted that given the gravity of the allegations, the applicant does not deserve bail.

5. Upon examining the charge-sheet, it is noted that the victims have specifically mentioned incidents of penetrative sexual assault in their statements. However, in the statements recorded under Section 164 of CrPC before the Magistrate, the details of penetrative sexual assault as described in the Section 161 CrPC statements are missing. Additionally, the FIR was filed after at least three years. The applicant has been in jail since 23rd December 2023, and charges have not yet been framed. The prosecution has cited 13 witnesses in total.

6. After careful consideration of the submissions made by both sides and the material on record, this Court is inclined to grant bail to the applicant for the following reasons:

7. There is a clear inconsistency between the statements recorded under Section 161 CrPC and Section 164 CrPC. While the Section 161 statements mention specific acts of penetrative sexual assault, the Section 164 statements before the Magistrate only describe "inappropriate touch" or "bad touch". This material difference creates doubt about the exact nature of the alleged offences and weakens the prosecution case.

8. The FIR was filed after an unexplained delay of approximately three years. While it is true that in cases involving sexual offences against children, some delay may be acceptable, such a long delay without proper explanation raises questions about the genuineness of the complaint, especially when the victims were living in the same household.

9. The applicant has been in custody since 23rd December 2023, and charges have not yet been framed. With 13 witnesses cited by the prosecution, the trial is likely to take considerable time to conclude. Continued detention without trial would violate the applicant's fundamental right to speedy trial and personal liberty.

10. The applicant has no criminal antecedents or previous involvement in any criminal case. This is a relevant factor while considering bail, as it indicates that the applicant is not a habitual offender.

11. There is no material on record to suggest that the applicant is likely to flee from justice or tamper with evidence. The prosecution has already collected the necessary evidence and recorded the statements of the victims.

12. The settled principle of criminal jurisprudence is that bail is the rule and jail is the exception. Unless there are compelling reasons to deny bail, an accused person should not be kept in prolonged detention, especially when the trial is likely to take time.

13. Hence, the following order :

(i) The Bail Application is allowed.

(ii) The applicant shall be released on bail in connection with Crime Register No. 934 of 2023 registered with Dharavi Police Station for offences punishable under Sections 376(2) (f), 376(2)(n), 376(A)(B) of IPC, and Sections 4, 6, 8 and 10 of POCSO Act, upon furnishing a Personal Bond of ₹25,000/- (Rupees Twenty-Five Thousand only) along 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 evidence, or directly or indirectly contact, influence, threaten, or intimidate any witness, particularly family members of the victims.

(b) The applicant shall attend all proceedings before the Trial Court regularly, unless exempted by the Court on valid grounds supported by sufficient cause.

(c) The applicant shall report to the concerned police station once in every month (i.e. on 1st day of every month) between 10:00 a.m. to 12:00 noon, until further orders.

(d) The applicant shall, at the time of furnishing surety, provide his current residential address and mobile number to the Investigating Officer as well as the Trial Court, and shall inform the Court in writing of any change in residence or

contact details during the pendency of the case.

(e) In case of any breach of the conditions mentioned above, the prosecution shall be at liberty to move for cancellation of bail.

14. The Bail Application is accordingly disposed of in above terms.

(AMIT BORKAR, J.)