

Shabnoor

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

BAIL APPLICATION NO. 2148 OF 2024

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... Applicant

V/s.

State of Maharashtra & Anr.

... Respondents

Ms. Ayesha Maldar a/w Ms. Vibha Mishra, for the applicant.

Ms. Mahalakshmi Ganapathy, APP for the State – respondent No.1.

Mr. Pranav Narsalia, for respondent No.2.

Mr. Jagtap, PSI, Vesrova Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 2, 2025

P.C.:

1. The present bail application has been preferred by the applicant under Section 439 of the Code of Criminal Procedure, 1973. The applicant seeks his release in connection with Crime Register No. 113 of 2022 registered at Vesrova Police Station. The applicant stands accused of offences punishable under Section 354 of the Indian Penal Code, 1860. In addition, provisions of Sections 7, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) have also been applied against him.

2. The case of the prosecution, in brief, is that on 8 March 2022, the complainant's daughter, who was then 7 years of age, was playing outside the house. Shortly thereafter, she returned home weeping. On being questioned, she disclosed to her mother that the accused had removed her underwear and touched her private part. At that very time, one neighbour, namely Ramu Shapal, is stated to have witnessed the applicant removing the underwear of the victim and inappropriately touching her. He immediately informed the complainant of what he had seen. The complainant, thereafter, rushed to the police station and lodged a formal complaint. On the basis of this complaint, the present crime came to be registered against the applicant.

3. Learned Advocate for the applicant submitted that the applicant was arrested on 10 March 2022 and has been behind bars since then. It is pointed out that the maximum punishment prescribed for the alleged offences is five years. The applicant has already undergone incarceration for more than three and a half years. It is therefore argued that continued detention of the applicant is unjust and violative of his fundamental rights guaranteed under Article 21 of the Constitution of India, which ensures the right to life and personal liberty. On these grounds, it is prayed that the applicant deserves to be released on bail.

4. On the other hand, the learned APP as well as the learned Advocate appointed to represent the victim have strongly opposed the application. It is submitted that the allegations against the applicant are grave and serious, especially considering that the victim is a minor child aged only 7 years. They have further drawn

attention to the fact that the applicant has as many as eight prior criminal antecedents to his discredit. It is urged that if the applicant is released on bail, there is every likelihood that he may misuse the liberty, tamper with the prosecution evidence, or threaten and influence the witnesses. In view of these circumstances, it is prayed that the bail application deserves to be rejected.

5. I have carefully considered the rival submissions and perused the material placed on record. It is true that the allegations made against the applicant are serious in nature, and that the victim is a child of tender age. Ordinarily, such offences must be viewed with utmost seriousness, as they strike at the very dignity and safety of children.

6. At the same time, while considering an application for bail, this Court is required to balance two competing interests, on one hand, the gravity of the allegations and the interest of the society in ensuring that such offences are dealt with sternly, and on the other hand, the fundamental rights of the accused under Article 21 of the Constitution of India, which guarantee that no person shall be deprived of liberty except in accordance with procedure established by law.

7. In the present case, it is an admitted position that the applicant has been in custody since 10 March 2022. Thus, he has undergone incarceration of more than three and a half years. The maximum punishment provided for the offences alleged against him is imprisonment for five years. In these circumstances,

continued incarceration of the applicant would practically amount to subjecting him to pre-trial punishment, which cannot be countenanced in law.

8. The Supreme Court, in several judgments including *Hussain and another v. Union of India* [(2017) 5 SCC 702], has held that prolonged incarceration without conclusion of trial violates the mandate of Article 21 and the principle of speedy trial. The Court has emphasized that in such situations, bail should normally be granted to the undertrial, even in cases involving serious offences, unless there are very exceptional circumstances to deny the same.

9. It is also a matter of record that the trial has not been concluded till date, and there is no material to indicate that the trial would be completed in the near future. Delay in trial cannot be attributed solely to the applicant. Therefore, in the overall facts and circumstances, continued detention would defeat the constitutional guarantee of a fair and speedy trial.

10. As regards the contention of the prosecution regarding the antecedents of the applicant, this Court is conscious of the fact that he has criminal cases registered against him. However, it is settled law that past antecedents by themselves cannot be the sole ground for denial of bail, if the other circumstances strongly lean in favour of release, particularly when the applicant has already undergone custody close to the maximum prescribed sentence. The apprehension of tampering with witnesses or influencing them can be addressed by imposing strict conditions while granting bail.

11. In the above view of the matter, this Court is of the opinion

that further custody of the applicant is not warranted. Appropriate conditions can safeguard the prosecution case. Hence, the applicant deserves to be enlarged on bail.

12. In view of the above discussion and legal position, the following order is passed:

- (i) The Bail Application is allowed.
- (ii) The applicant shall be released on bail in connection with Crime Register No. 113 of 2022 registered with Versova Police Station for offences punishable under Sections 354 of IPC, and Sections 7, 8, 12 of POCSO, 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.
 - (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 Versova Police Station, Mumbai on the first Monday of every month between 10.00 a.m. and 12.00 noon, until further orders.
 - (d) The applicant shall not leave the territorial jurisdiction of the State of Maharashtra without the prior written

permission of the Trial Court.

(e) The applicant shall not enter the territorial jurisdiction of the Trial Court and the concerned police station till the conclusion of the trial, without the prior permission of the Trial Court, except for the limited purpose of marking his presence and attending trial proceedings.

(f) The applicant shall not commit any offence or engage in any criminal activity during the pendency of the trial.

(g) 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.

13. The Bail Application stands disposed of in above terms.

(AMIT BORKAR, J.)