

Shabnoor

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

BAIL APPLICATION NO.2525 OF 2024

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Durgesh Bhaskar Mazi

... Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

Ms. Sana Shaikh with Nisha Lakhariya, Maya Updeshe, Vipul Ghate, S. Shinde, Rucha Shaikh, and Oratik Thadane, for the applicant.

Ms. Rajashree V. Newton , APP for the State – respondent No.1.

Mr. Omkar Nagwekar, for respondent No.2 (Appointed Legal Aid).

CORAM : AMIT BORKAR, J.

DATED : AUGUST 26, 2025

P.C.:

1. The present bail application has been filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking his release on bail in connection with Crime Register No. 98 of 2022 registered at Turbhe Police Station. The applicant stands charged with offences punishable under Sections 376(2)(i), 342, 366(a), and 506 of the Indian Penal Code, 1860, and under Sections 4, 6, 8, and 17 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. According to the prosecution case, the minor victim aged 13 years was staying at her maternal aunt's house along with her friend aged 15 years. The applicant and his co-accused friend Pradeep were also present at the said house. Both the applicant and co-accused Pradeep pulled the minor victim inside the house. Upon witnessing this, her friend ran away from the spot. Thereafter, co-accused Pradeep embraced the minor victim, and at that time, the applicant locked the door from outside and left the premises. The co-accused Pradeep then forcibly committed sexual intercourse with the minor victim. Based on the complaint filed, the present case was registered against the applicant.

3. The learned Advocate representing the applicant has submitted that this Court, vide its order dated 3rd October 2023, in an earlier bail application filed by the applicant, had permitted the applicant to withdraw the said application with liberty to file a fresh bail application after a period of six months or upon completion of recording the evidence of the child witness under Section 35 of the POCSO Act, whichever was earlier. It is submitted that the stipulated period of six months has now expired, and the evidence of the child witness has been duly recorded.

4. The learned counsel further submits that the specific role attributed to the applicant is limited to allegedly locking the room which was used by the co-accused for committing the offence of forcible sexual intercourse with the victim. It is submitted that the applicant was not directly involved in the commission of the sexual assault upon the victim. The applicant has been in judicial custody

since 8th April 2022. Considering the limited role attributed to the applicant, it is prayed that the applicant deserves to be released on regular bail.

5. On the contrary, the learned Additional Public Prosecutor and the learned Advocate representing the victim have opposed the present bail application. It is submitted that the applicant had prior knowledge of the criminal act to be committed by the co-accused and actively participated in the same by locking the room where the offence of forcible sexual intercourse was committed upon the victim. They have contended that the applicant's act of locking the room clearly indicates his active participation in the alleged offence, thereby making him equally liable for the criminal acts performed by the co-accused. Therefore, it is submitted that the present bail application deserves to be rejected.

6. Having heard the learned counsels for both sides and having perused the material on record, this Court proceeds to consider the present bail application on the following grounds:

7. While the offences under consideration are undoubtedly serious in nature, particularly those under the POCSO Act which involve the protection of children from sexual offences, the Court must examine the specific role attributed to each accused person individually. The principle of individual culpability requires that each accused be treated based on their specific involvement in the alleged crime.

8. Upon careful examination of the prosecution case, it is evident that the primary allegation against the applicant is limited

to locking the door from outside after the co-accused had taken the victim inside. While this act, if proved, would constitute abetment, the applicant's role appears to be peripheral compared to the direct commission of the sexual offence by the co-accused Pradeep. The applicant is not alleged to have directly participated in the sexual assault upon the minor victim.

9. The applicant has been in judicial custody since 8th April 2022, which amounts to approximately three years and four months. Considering the nature of his alleged involvement and the fact that investigation appears to be substantially complete with the recording of the victim's statement, continued incarceration without trial would amount to pre-trial punishment.

10. As submitted by the applicant's counsel and not disputed by the prosecution, the evidence of the child witness has been recorded under Section 35 of the POCSO Act. This was one of the conditions stipulated by this Court in its earlier order dated 3rd October 2023. The recording of the victim's testimony reduces the likelihood of tampering with crucial evidence.

11. The fundamental right to speedy trial enshrined under Article 21 of the Constitution of India mandates that an accused person should not be subjected to indefinite incarceration without trial. The prolonged custody of the applicant, coupled with his limited role in the alleged offence, weighs in favor of granting bail.

12. There is no material on record to suggest that the applicant poses a flight risk or would abscond if released on bail. The prosecution has not raised any specific concerns regarding the

applicant's antecedents or likelihood of fleeing from justice.

13. Given that the key witness (victim) has already been examined and recorded her statement, and considering that the investigation appears to be substantially complete, the possibility of the applicant tampering with evidence or influencing witnesses is significantly reduced.

14. The principle of proportionality requires that the punishment should be proportionate to the alleged crime. While the Court is not pronouncing on the guilt or innocence of the applicant at this stage, the limited nature of his alleged involvement compared to the co-accused, coupled with the prolonged incarceration, tilts the balance in favor of granting bail.

15. Considering the totality of circumstances, the limited role attributed to the applicant, the substantial period already spent in custody, the completion of recording of the victim's evidence, and the absence of any compelling reasons to believe that the applicant would tamper with evidence or abscond, this Court is of the considered view that the applicant has made out a case for grant of regular bail.

16. However, given the serious nature of the allegations and the involvement of a minor victim, it is necessary to impose stringent conditions to ensure that the applicant does not misuse the liberty granted to him and that the trial proceeds smoothly without any obstruction.

17. 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. 98 of 2022 registered with Turbhe Police Station for offences punishable under Sections 376(2) (i), 342, 366(a), 506 of IPC, under Sections 4, 6, 8, 17 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, in any manner, contact the victim or her family members, directly or indirectly.
 - (b) The applicant shall not enter the locality where the victim resides, and shall maintain a distance of at least 500 meters from the place of alleged incident.
 - (c) The applicant shall attend all proceedings before the Trial Court regularly, unless exempted by the Court on valid grounds supported by sufficient cause.
 - (d) The applicant shall report to the Turbhe Police Station on the first Monday of every month between 10.00 a.m. and 12.00 noon, until further orders.
 - (e) The applicant shall not enter the jurisdiction of Turbhe Police Station, except for the limited purpose of marking his presence as directed above.

(f) The applicant shall not leave the territorial jurisdiction of the State of Maharashtra without the prior written permission of the Trial Court.

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

(h) The applicant shall provide his current residential address and inform the court in case of change of residence.

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

(AMIT BORKAR, J.)