

Shabnoor

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

BAIL APPLICATION NO. 2913 OF 2024

Rashid Majid Malik

... Applicant

V/s.

State of Maharashtra & Anr.

... Respondents

Mr. Prabhanjay R. Dave, for the applicant.

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

Mr. Gaurav Sharma for respondent No.2 (Appointed as Legal Aid).

Mr. Mahesh Anjanwad, PSI, Shivaji Nagar Police Station is present.

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 release in connection with Crime Register No. 1030 of 2023 registered at Shivaji Nagar Police Station. The applicant stands charged with offences punishable under Sections 376, 376(2)(n) of the Indian Penal Code, 1860, and under Sections 4, 6, 8, 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO).

2. The prosecution case, briefly stated, is that on 23rd November 2023, the complainant, aged about 17 years, lodged an

FIR stating that she lives with her family and the applicant also lives in the same area. She used to visit the applicant's house to watch television. She has alleged that about 15 days earlier, she went to the applicant's house to watch TV at around 6:00 p.m. when the applicant forcibly committed sexual intercourse with her. She has further alleged that on 22nd November 2023, the applicant again committed rape on her. At that time, her brother and uncle witnessed the act through the window. She narrated this incident to her family members, following which the FIR was lodged against the applicant.

3. The learned Advocate for the applicant has referred to the statement in the FIR and submitted that the first incident of forcible sexual intercourse allegedly occurred on 9th November 2023, while the second incident of sexual assault took place on 22nd November 2023. The victim was around 17 years of age at the time of the first incident. The FIR was lodged on 23rd November 2023. He has drawn attention to the medical examination of the victim's genital parts and submits that the findings on record show that the victim was unwilling to undergo the examination. Therefore, the examination regarding Labia minora, Fourchette & Introitus, Hymen, and P/V findings could not be performed, and Per Vaginum/Per Speculum examination was not conducted. Moreover, he submits that while the victim stated in her report that during the incident on 22nd November 2023, her brother witnessed the penetrative act through the window, the panchnama of the spot does not show the existence of any window. He further submits that the applicant was arrested on

24th November 2023. Therefore, he prays that the applicant be granted bail.

4. On the contrary, the learned Additional Public Prosecutor and the learned Advocate appointed to represent the victim have opposed the bail application. They submit that the victim's statement contains a detailed and graphic account of the alleged incidents. It is further submitted that due to the victim's age and the threat posed by the applicant, she was initially unable to report the matter. The delay in lodging the FIR is attributed to psychological trauma and fear created by the applicant. It was only after the applicant moved away from the area and the victim gathered sufficient courage that she lodged the report on 23rd November 2023. They further contend that the statements of witnesses indicate their presence at or near the scene during the alleged incident on 22nd November 2023. Hence, there is prima facie material suggesting the involvement of the applicant. Therefore, they submit that the bail application should be rejected.

5. After careful consideration of the submissions made by both sides and perusal of the material on record, this Court finds merit in granting bail to the applicant for the following reasons:

6. The prosecution case suffers from material inconsistencies that raise doubts about its veracity. The FIR mentions the first incident occurring "around 15 days back" from 23rd November 2023, which would place it around 8th-9th November 2023. However, the learned counsel for the applicant has pointed out discrepancies in the dates mentioned in the FIR and other

documents, creating confusion about the exact timeline of events.

7. The medical examination of the victim, which is crucial evidence in cases of sexual assault, could not be completed as the victim was unwilling to undergo the examination. The medical report specifically mentions that examination of Labia minora, Fourchette & Introitus, Hymen, and P/V findings could not be performed, and Per Vaginum/Per Speculum examination was not conducted. This absence of medical corroboration weakens the prosecution case significantly.

8. The victim has alleged that during the incident on 22nd November 2023, her brother witnessed the act through a window. However, the panchnama of the spot of incident does not indicate the existence of any such window. This material contradiction in the prosecution case raises serious doubts about the truthfulness of the allegations.

9. While the prosecution attributes the delay in lodging the FIR to psychological trauma and fear, the Court notes that the victim was 17 years of age and the first incident allegedly occurred around 9th November 2023, with the FIR being lodged only on 23rd November 2023. Though delay in reporting sexual offences is not uncommon, when viewed along with other inconsistencies, it adds to the doubts about the prosecution case.

10. The applicant was arrested on 24th November 2023 and has been in custody. There is no material on record to suggest that the applicant is a flight risk or that he would tamper with evidence or influence witnesses if released on bail. The prosecution has not

demonstrated any specific threat posed by the applicant's release.

11. While serious allegations have been levelled against the applicant under Sections 376, 376(2)(n) of the IPC and Sections 4, 6, 8, 12 of the POCSO Act, bail is the rule and jail is the exception. The Supreme Court in various pronouncements has held that bail should not be withheld as a punishment, and the Court must balance the gravity of the offence against the fundamental right of personal liberty.

12. Though the prosecution claims there is prima facie material against the applicant, the material contradictions, lack of medical corroboration, and inconsistencies in the prosecution case create reasonable doubt about the strength of the case. At the stage of bail, the Court is not required to conduct a mini-trial but must assess whether there is sufficient material to deny liberty to the accused.

13. Considering the totality of circumstances, the inconsistencies in the prosecution case, lack of medical corroboration, material contradictions regarding the scene of crime, and the fundamental principle that bail is the rule and jail is the exception, this Court is of the considered opinion that the applicant is entitled to be released on bail.

14. The apprehensions raised by the prosecution regarding the safety of the victim and potential tampering of evidence can be adequately addressed through appropriate bail conditions.

15. Therefore, the bail application is allowed subject to the conditions enumerated hereinafter.

16. Hence, the following order :

- (i) The Bail Application is allowed.
- (ii) The applicant shall be released on bail in connection with Crime Register No. 1030 of 2023 registered with Shivaji Nagar Police Station for offences punishable under Sections 376, 376(2)(n) of IPC, and under Sections 4, 6, 8, 12 of the 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 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 Shivaji Nagar Police Station on the first Monday of every month between 10.00 a.m. and 12.00 noon, until further orders.
 - (d) The applicant shall not enter the jurisdiction of Turbhe Police Station, except for the limited purpose of marking his presence as directed above.
 - (e) The applicant shall not leave the territorial jurisdiction of the State of Maharashtra without the prior written permission of the Trial Court.

(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.

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

(AMIT BORKAR, J.)