

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2964 OF 2024

Husain Sahebmiya Shaikh ... Applicant
V/s.
The State of Maharashtra ... Respondent

AND
BAIL APPLICATION NO.4646 OF 2024

ATUL
GANESH
KULKARNI
Digitally signed by
ATUL GANESH
KULKARNI
Date: 2025.06.30
17:43:53 +0530

Shabana Imran Khan ... Applicant
V/s.
The State of Maharashtra & Anr. ... Respondents

AND
BAIL APPLICATION NO.2964 OF 2024

Mukundlal Udayraj Bind ... Applicant
V/s.
The State of Maharashtra & Anr. ... Respondents

Mr. Vikram Tare Patil for the applicant in all BA.

Mrs. Shilpa G. Talhar, APP for the State.

Mr. Parag Bhat, API, Nayanagar Police Station, is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 30, 2025

P.C.:

1. These are applications for regular bail filed by the applicants under Section 439 of the Code of Criminal Procedure, 1973. The

applicants are seeking their release in connection with Crime Register No. 195 of 2023 registered with Nayanagar Police Station, Virar. The offences alleged are under Sections 376(D), 328, 377, 342, 506, 114, 340 read with Section 34 of the Indian Penal Code, 1860.

2. The case of the prosecution, in brief, is that the complainant is a woman who used to sell vegetables at the Fish Market in Mira Road. One of the co-accused, namely Shabana, was her regular customer and, over time, developed acquaintance with her. The complainant was facing hardship in finding a rented accommodation, and taking advantage of this, Shabana insisted that the complainant stay with her. Succumbing to the difficulties of finding a place to live, the complainant began staying at Shabana's house from 18 October 2022.

3. According to the complainant, on the same night around 9:00 p.m., two individuals—Mukund Bind and Surajdeo Sahu—came to Shabana's house carrying liquor and energy drink (Red Bull). Shabana allegedly insisted that the complainant drink the energy drink. Upon consuming it, the complainant began losing consciousness. In a semi-conscious state, she saw Mukund Bind and Surajdeo Sahu removing her clothes. Thereafter, she lost complete consciousness.

4. When she regained her senses at around 3:00 a.m. on 19 October 2022, she found herself completely naked and in severe pain in her private parts and other body parts. She then realised that the said two accused had mixed some intoxicating or

stupefying substance in her drink and had raped her. It is further alleged that the accused told her that they were involved in prostitution business and that she would also be forced into it.

5. The complainant has alleged that on 19 October 2022, the said two accused, along with two more accused namely Naresh and Husain, committed gang rape upon her. Thereafter, they continuously threatened and blackmailed her by stating that they had made obscene videos of her and would circulate the same if she refused to comply. It is alleged that they repeatedly committed rape on her and forced her into prostitution. Between October 2022 and January 2023, she was allegedly sent to various lodges for prostitution. Ultimately, in January 2023, she managed to escape from their clutches, and in April 2023, with the help of social workers, she approached Nayanagar Police Station and lodged the complaint.

6. Learned Advocate for the applicants submitted that the victim's statement attributes the incident of rape to the applicants on 19 October 2022, alleging that co-accused Naresh had brought the applicants to the house of Shabana and that they thereafter committed forcible sexual intercourse. However, it is pointed out that as per the report filed under Section 169 of the CrPC, the said co-accused Naresh was in judicial custody on the said date, which casts doubt on the veracity of the victim's version regarding the involvement of the present applicants.

7. Furthermore, it is argued that there is no recovery of any call detail record (CDR), CCTV footage or any other corroborative

material linking the applicants with the complainant or with the premises in question. Even the allegation that the applicants forced the complainant to go to various lodges for prostitution from October 2022 to January 2023 is not supported by any CCTV footage, lodge register entries, or any other material that could indicate movement or presence of the applicants at such places. It is also submitted that the applicants have no criminal antecedents and have been falsely implicated. Therefore, it is urged that the applicants be released on bail, subject to appropriate conditions.

8. On the other hand, the learned APP has strongly opposed the grant of bail. She submits that the allegations against the applicants are extremely serious and concern offences that are not only grave in nature but also shock the conscience of society. It is pointed out that the statement of the victim under Section 164 of the CrPC is consistent with her version in the FIR and that the victim has given a detailed account of the ordeal she faced. The learned APP submits that the victim's statement inspires confidence at this stage and, considering the nature of the accusations, the applicants should not be granted bail at this stage.

9. Upon careful perusal of the charge-sheet filed in the present case, including the statement of the victim recorded under Section 164 of the Code of Criminal Procedure and other materials on record, it is noticed that a report has been filed under Section 169 of the Code, which specifically states that the co-accused Naresh—who is alleged to have accompanied the present applicants to the house of Shabana on the date of the alleged incident—was already in judicial custody on that very day. This aspect creates a serious

doubt about the correctness of the allegations made with respect to the presence and participation of the present applicants in the alleged offence on the said date.

10. Furthermore, it is not the case of the prosecution that any mobile phone belonging to the applicants has been recovered or seized in the course of investigation. There is also no recovery of any CCTV footage from any of the lodges or hotels where, as per the prosecution's version, the victim was allegedly taken and subjected to further offences. Similarly, there is no seizure or production of any call detail records (CDRs) to establish any telephonic communication between the victim and the applicants, either prior to the alleged incident or in the period that followed.

11. Additionally, the mobile phone of the victim herself has not been seized during the course of investigation, which could have been a vital source of evidence to verify the claims of the victim regarding communication, location, and movement history. This omission significantly affects the evidentiary strength of the prosecution case against the present applicants.

12. Taking into consideration all these circumstances cumulatively—particularly the absence of corroborative material like CDRs, CCTV footage, or recovery of mobile phones—and keeping in view the fact that the investigation is complete and the charge-sheet has already been filed, I am of the considered opinion that the continued incarceration of the applicants is not necessary. There is no material to indicate that the applicants may abscond or tamper with the evidence. Hence, the applicants have made out a

prima facie case for grant of bail.

13. Hence, following order:

- i) All three bail applications are allowed;
- ii) The applicants are directed to be released on regular bail in connection with Crime Register No.195 of 2023 registered with Nayanagar Police Station, Virar for offences punishable under Sections 376(D), 328, 377, 342, 506, 114, 340 read with 34 of the IPC, upon furnishing personal bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) each with one or more solvent sureties in the like amount, to the satisfaction of the Trial Court, subject to the following conditions:
 - a) The applicants shall not, in any manner, contact the victim or her family members, directly or indirectly.
 - b) The applicants shall not tamper with the evidence or attempt to influence any witness.
 - c) The applicants shall appear before the Trial Court on every date of hearing unless prevented by sufficient cause.
 - d) The applicants shall not leave the territorial jurisdiction of the Trial Court without prior permission.
 - e) The applicants shall not indulge in any criminal activity during the pendency of the trial.
 - f) If any of the above conditions are breached, it shall be open to the prosecution to seek cancellation of bail.

14. All three bail applications are allowed and disposed of.

(AMIT BORKAR, J.)