

Shabnoor

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

BAIL APPLICATION NO.3008 OF 2024

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Hiren Babulal Nadiyapara	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Anjali Patil a/w Tohid Shaikh with Onkar Gurav for the Applicant.

Ms. Supriya Kak, APP for the State – respondent.

Mr. Hanumant Hambe, API Mahatma Phule Police Station.

CORAM : AMIT BORKAR, J.

DATED : JUNE 11, 2025

P.C.:

1. This is an application filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail in connection with Crime Register No. I-375 of 2024 registered with Mahatma Phule Chowk Police Station. The said offence is registered under Sections 376(2)(n), 376-D, 500, and 506 of the Indian Penal Code, 1860, which relate to repeated rape, gang rape, defamation, and criminal intimidation respectively.

2. The case of the prosecution, in brief, is that during the period from 4th October 2023 to 12th March 2024, the applicant is alleged to have established sexual relations with the prosecutrix repeatedly by threatening her that he would make her obscene

photographs viral if she refused to marry him. The First Information Report further discloses that the prosecutrix was allegedly subjected to rape on multiple occasions under such threats. It is in this context that the learned Sessions Judge, upon considering the nature and gravity of the allegations, was pleased to reject the applicant's earlier bail application.

3. Learned counsel appearing for the applicant has drawn attention to certain aspects of the FIR which, according to him, prima facie indicate a consensual relationship between the parties. It is submitted that the prosecutrix is a married woman with two children, and it is not the case that she was unaware of the nature and consequences of the relationship. Learned counsel further submits that the relationship started voluntarily on account of messages allegedly exchanged between the applicant and the prosecutrix. He submits that the prosecutrix willingly accompanied the applicant to several places on her own volition, and therefore, the requirement of establishing absence of consent, which is a sine qua non for attracting the ingredients of Section 376, is not fulfilled.

4. On the other hand, the learned Additional Public Prosecutor has strongly opposed the bail application. It is submitted that the allegations in the FIR are of a very serious nature involving repeated sexual exploitation under the threat of misuse of personal images. The learned APP contends that the allegations not only pertain to rape, but also involve criminal intimidation and defamation, which show a pattern of coercive conduct. It is submitted that, looking to the nature of the allegations and the

stage of investigation, this is not a fit case for grant of bail.

5. Upon careful perusal of the chargesheet, the statement of the prosecutrix, and other material placed on record, it prima facie appears that the prosecutrix is a married woman having two children. It is further evident from the record that she had accompanied the applicant to various hotels at different locations over a substantial period. The record also discloses that the prosecutrix is about 29 years old, whereas the applicant is approximately 35 years of age. At this stage, it is not the case of the prosecution that the prosecutrix was forcibly taken by the applicant, or that she was under any physical constraint. Whether her consent was freely given or was obtained under threat is a matter which shall be determined during the course of trial, after appreciation of the evidence led by both sides.

6. The applicant has been in custody since 19th April 2024. As informed, the charges are yet to be framed and the trial is likely to commence shortly. There is no material brought on record to suggest that the applicant has attempted to tamper with evidence or influence witnesses during the period of investigation. The applicant has no serious criminal antecedents on record, and further incarceration, at this stage, may not serve any purpose, particularly when the trial is likely to be concluded in the near future.

7. It is a settled position of law that at the stage of considering bail, a detailed examination of the merits of the prosecution case is not required. The Court is to see whether the custodial

interrogation is necessary, whether the accused is likely to flee from justice, and whether there is any possibility of tampering with evidence or influencing witnesses.

8. In the present case, taking into account the age and status of the prosecutrix, the nature of the relationship as emerging from the record, the absence of immediate threat to the witnesses or evidence, and considering the period already undergone by the applicant in custody, this Court is of the opinion that the applicant deserves to be released on bail, subject to stringent conditions to ensure his availability during trial and to prevent any misuse of the liberty granted.

9. In view of the above discussion, the following order is passed:

(i) The Bail Application is allowed.

(ii) The applicant, *Hiren Babulal Nadiyapara*, shall be released on bail in connection with C.R. No. I-375 of 2024 registered with Mahatma Phule Chowk Police Station, upon executing a personal bond of ₹25,000/- (Rupees Twenty-Five Thousand Only), with one or more solvent sureties in the like amount, to the satisfaction of the Trial Court, and subject to the following conditions:

(a) The applicant shall not, in any manner, contact the prosecutrix or her family members, directly or indirectly.

(b) The applicant shall not tamper with the evidence or attempt to contact, influence, threaten, or intimidate any

prosecution witness in any manner.

(c) The applicant shall attend the Trial Court regularly on each date of hearing unless prevented by sufficient cause, which shall be communicated in advance to the satisfaction of the Trial Court.

(d) The applicant shall not leave the territorial jurisdiction of the Trial Court without its prior written permission.

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

(f) At the time of furnishing surety, the applicant shall provide his current residential address and mobile number to the Investigating Officer and the concerned Trial Court, and shall inform the Court in writing of any change in address or contact details during the pendency of the case.

10. The Bail Application stands disposed of accordingly.

(AMIT BORKAR, J.)