

Shabnoor

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

BAIL APPLICATION NO. 3311 OF 2024

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Harshad @ Dolly	
@ Kaki Manohar Kadam	... Applicant
V/s.	
State of Maharashtra & Anr.	... Respondents

Mr. Sushan N. Mhatre, for the applicant.

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

Mr. Ankit J. Bagoria, for respondent No.2 (appointed
through Legal-aid).

Mr. Ganesh Pawar, PSI, Mahad City Police Station is
present.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 6, 2025

PC.:

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail. It arises from Crime Register No. 242 of 2023 registered with Mahad City Police Station. The applicant is charged for offences punishable under Sections 377 and 201 of the Indian Penal Code, 1860. The prosecution has also invoked Sections 4, 6, 8, and 21 of the Protection of Children from Sexual Offences Act, 2012, and Section 67C of the Information Technology Act, 2000.

2. The prosecution case, in brief, is that the applicant is a transgender person who has undergone a sex change operation. He was employed as a part-time worker and labourer. The complainant is the Superintendent of a children's institution since 1 May 2023. The victim has been residing in the said institution since 13 February 2023. Prior to this, the victim stayed at "Swarajya Niwara Samajik Sanstha," which is managed by the co-accused Aniket Tamble. The applicant worked as a helper in that institution. On 19 September 2023, during an enquiry made by the complainant, the victim disclosed that the applicant had forced him to engage in oral sex when he was staying at the Swarajya Sanstha. Based on this disclosure, the present complaint was lodged.

3. Learned Advocate for the applicant submitted that the applicant belongs to the LGBTQ community, is around 22 years of age, and is suffering from intersphincteric fistula with a secondary tract. He is also a known case of HIV, undergoing antiretroviral therapy. The medical report dated 4 October 2025 shows that the applicant has been referred to Sir JJ Group of Hospitals, Mumbai, on more than 30 occasions since 17 January 2024 for treatment. He has been advised to undergo USG and MRI Fistulogram, which revealed an intersphincteric fistula with a secondary tract. He has also been advised to undergo fistulotomy under spinal anesthesia.

4. In support of his plea, the learned Advocate relied on the judgment of the Supreme Court in *Bhawani Singh v. State of Rajasthan*, 2022 SCC OnLine SC 1991, and the judgment of a Coordinate Bench of this Court in *XXX v. State of Maharashtra*,

2024 SCC OnLine Bom 1984. In the latter case, while dealing with similar allegations, the Court observed that persons belonging to the LGBTQ+ community and suffering from HIV are to be treated as a vulnerable class, and such applicants were released on bail.

5. The learned Advocate also referred to Section 34(2) of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017, which mandates expeditious disposal of cases involving accused persons suffering from HIV. He further relied on the judgment of the Karnataka High Court in *Rajendra v. State of Karnataka, Through Dibburahalli PS & Anr., 2025 SCC OnLine Kar 10500*, where the accused suffering from HIV was granted bail on medical grounds. On this basis, it is urged that the applicant deserves bail on humanitarian and medical considerations.

6. The learned APP opposed the application. He relied upon the medical report submitted by the Chief Medical Officer, Thane Central Prison. The report shows that the applicant is receiving adequate medical treatment, including necessary tests and regular follow-ups at Sir JJ Group of Hospitals, Mumbai. The report records that the applicant was admitted to Sir JJ Hospital on 17 January 2024 and again on 24 January 2024, and thereafter was regularly taken for follow-up examinations. The required investigations, including USG and MRI Fistulogram confirming intersphincteric fistula with secondary tract, have been conducted. The report further notes that the applicant will be referred to Sir JJ Hospital for elective surgery as per medical advice.

7. Thus, according to the prosecution, all necessary medical facilities are being provided to the applicant, both at the prison hospital and through regular referrals to Sir JJ Group of Hospitals, and therefore no case for bail on medical grounds is made out.

8. Having considered the rival submissions and perused the record, the following reasons support the grant of bail to the applicant.

9. The allegations against the applicant are serious in nature. However, the trial is yet to commence. The charge-sheet has been filed, and the investigation is complete. Therefore, the continued detention of the applicant is not necessary for any further investigation.

10. The material on record shows that the applicant belongs to the LGBTQ community and is undergoing treatment for serious medical ailments. The medical report dated 4 October 2025, submitted by the Chief Medical Officer, Thane Central Prison, indicates that the applicant is a known case of HIV and is under continuous antiretroviral therapy. He also suffers from intersphincteric fistula with a secondary tract and has been referred to Sir JJ Group of Hospitals, Mumbai, on multiple occasions for treatment and surgical procedures.

11. The said medical report confirms that despite regular medical assistance being provided in prison, the applicant requires specialized care, surgical intervention, and continuous follow-up in a tertiary hospital setting. The nature of the ailment, being chronic and progressive, necessitates medical attention beyond the routine

facilities available in prison.

12. The provisions of Section 34(2) of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017, emphasize that cases involving accused persons suffering from HIV must be disposed of expeditiously, thereby recognizing their medical vulnerability. The underlying legislative intent is to ensure that such persons are not subjected to unnecessary hardship which may aggravate their condition.

13. While considering bail applications of persons who belong to vulnerable sections of society or those suffering from serious medical ailments, the Court must act with a sense of compassion guided by law. The principle of bail being the rule and jail the exception is not merely a technical norm. It flows from Article 21 of the Constitution, which guarantees the right to life and personal liberty. Such right extends to the preservation of one's health and access to medical treatment while in custody.

14. When the record clearly shows that the accused suffers from a grave medical condition, such as HIV or other chronic illness, and that his condition requires continuous medical supervision and specialized care, the Court cannot remain a silent spectator. The duty of the Court is to ensure that the administration of criminal justice does not operate harshly against those whose health places them in a fragile position. The objective of detention is to ensure the presence of the accused during trial, not to cause physical deterioration or denial of proper treatment.

15. Humanitarian considerations, however, cannot override public interest or the need to ensure a fair trial. Therefore, the Court must balance both. Where the allegations are serious but the evidence collected is documentary in nature and the investigation is complete, the apprehension of the accused interfering with the process of justice becomes remote. In such circumstances, prolonged incarceration of a person suffering from a severe medical condition would amount to an unjust deprivation of his constitutional right.

16. In the present case, credible medical evidence supports the applicant's claim. The report of the Chief Medical Officer of Thane Central Prison and the records of Sir JJ Group of Hospitals confirm that the applicant is HIV positive and is undergoing antiretroviral therapy. He is also suffering from an intersphincteric fistula with a secondary tract, requiring regular hospital visits, diagnostic tests, and possible surgical intervention. These records are official, issued by competent medical authorities, and therefore carry a presumption of correctness.

17. The prosecution has not disputed the authenticity of these medical documents. The report filed by the prison authorities themselves admits that the applicant requires follow-up treatment at a tertiary hospital. This supports the inference that his condition is not minor or manageable solely within the prison hospital. Hence, the medical evidence on record is sufficient and credible to establish that the applicant's continued detention may cause undue hardship and may obstruct proper medical care.

18. The applicant belongs to the LGBTQ community, a section recognized as vulnerable due to social stigma and discrimination. Courts are duty-bound to ensure that such persons are not exposed to further humiliation or neglect merely because of their gender identity. The law requires equal protection and humane treatment for all citizens, irrespective of gender or identity.

19. Therefore, guided by credible medical evidence and the settled legal position, this Court is satisfied that humanitarian considerations must prevail in this case. The balance between the rights of the accused and the interests of justice can be maintained by imposing appropriate conditions. The applicant's release on bail, subject to such terms, would ensure both fair trial and protection of his health and dignity.

20. In *XXX v. State of Maharashtra, 2024 SCC OnLine Bom 1984*, this Court granted bail to an applicant belonging to the LGBTQ community and suffering from HIV, recognizing the need for sensitive treatment and continued medical support.

21. The applicant has been in custody since 17 January 2024, a period sufficient for completion of investigation and filing of the charge-sheet. The possibility of tampering with evidence or influencing witnesses appears remote, as the victim is under institutional care and protection.

22. The offences alleged are grave, but at this stage, it cannot be said that the applicant's release would cause prejudice to the prosecution. The principle that bail is the rule and jail the exception applies with greater force when the accused suffers from

serious medical ailments requiring specialized treatment.

23. Having regard to the applicant's medical condition, social background, and the fact that necessary restrictions can be imposed to ensure his availability during trial, this Court is of the view that continued incarceration would serve no useful purpose.

24. Accordingly, the applicant deserves to be enlarged on bail on medical and humanitarian grounds, subject to appropriate conditions ensuring his presence during trial and prohibiting any contact with the victim or witnesses.

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

(i) The Bail Application is allowed.

(ii) Considering the fact that the applicant is a labourer with limited financial means, he shall be released on cash bail of ₹10,000/- (Rupees Ten Thousand only) in connection with Crime Register No. 242 of 2023 registered with Mahad City Police Station for offences punishable under Sections 377 and 201 of IPC, Sections 4, 6, 8 and 21 of POCSO, and under Section 67C of the Information Technology Act.

(iii) Within a period of 16 weeks from the date of his release, the applicant shall furnish a Personal Bond of ₹10,000/- (Rupees Ten Thousand only) 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, particularly family members of the deceased.

(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 Mahad City 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 leave the territorial jurisdiction of the State of Maharashtra without prior written permission of the Trial Court.

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

(f) 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.

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

(AMIT BORKAR, J.)