

AGK

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

BAIL APPLICATION NO.3515 OF 2024

Virbahadur Rambiksh Konajiya ... Applicant
V/s.
 The State of Maharashtra & Anr. ... Respondents

Ms. Priyanka A. Nawale (through V.C.) with Mr. Hanumant Bade and Mr. Bharat Shinde for the applicant.

Mr. Prasanna P. Malshe, APP for respondent No.1-State.

Mr. Padamsinh P. Patil i/by Mr. Tanmay Kate for respondent No.2-victim.

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CORAM : AMIT BORKAR, J.

DATED : JUNE 27, 2025

P.C.:

1. This is an application for regular bail filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973. The applicant seeks his release in connection with Crime No.151 of 2023 registered with Nerul Police Station for the offences punishable under Section 376(2)(i) and Section 506 of the Indian Penal Code, 1860, and Sections 5 and 8 of the Protection of Children from Sexual Offences Act, 2012.

2. The learned advocate appearing on behalf of the applicant submitted that the earlier bail application came to be rejected by the learned Sessions Court on 19th May 2021, mainly on the ground of seriousness of the offence and young age of the victim.

It was then observed that in view of the gravity of the allegations and the age of the prosecutrix, the applicant did not deserve bail at that stage.

3. However, the applicant now submits that there is a material change in circumstances. It is pointed out that the Forensic Laboratory Report is now on record, and it does not indicate the presence of blood, tissue or semen. It is further submitted that the applicant has been falsely implicated in this case. The investigation is already completed and charge-sheet is filed before the competent Court. Therefore, it is urged that further incarceration of the applicant would not serve any useful purpose, especially when the trial is yet to commence.

4. It is also submitted that the applicant has been arrested on *3rd December 2020* and since then he is in custody. It is pointed out that charges are not yet framed and the prosecution has cited 17 witnesses, and hence, there is no likelihood that the trial would conclude in the near future. It is argued that prolonged detention without trial amounts to pre-trial punishment, which is impermissible in law.

5. On the other hand, the learned APP and the learned advocate appearing for the victim (respondent No.2) opposed the application and submitted that the allegations are grave and serious in nature. It is submitted that at the time of the incident, the victim was only 13 years old, whereas the applicant was a 29-year-old adult male. According to them, the material collected during investigation indicates the role of the applicant in the

offence. It is, therefore, submitted that in the facts of the case, the applicant does not deserve to be released on bail.

6. Upon careful consideration of the rival submissions and the material placed on record, it is not in dispute that the applicant is now in custody since *3rd December 2020*. It is also undisputed that the investigation is complete and charge-sheet has been filed before the competent Court. Hence, the applicant is no longer required for custodial interrogation.

7. It is seen from the record that the Forensic Science Laboratory (FSL) report has not revealed presence of blood, tissue, or semen, which fact can be considered as a change in circumstance from the time when the earlier bail application was rejected. Though the offence alleged is undoubtedly serious, at this stage, the presumption of innocence is still in favour of the applicant, as the trial is yet to begin.

8. The prosecution has cited 17 witnesses, and the charges are yet to be framed. Therefore, it is unlikely that the trial will conclude in the near future. Keeping the applicant incarcerated for an indefinite period, particularly when the trial is not likely to proceed with reasonable expedition, would amount to pre-trial detention, which must be avoided unless clearly warranted.

9. There is nothing placed on record to show that the applicant has criminal antecedents or is likely to abscond or tamper with evidence. Any apprehension regarding misuse of liberty can be addressed by imposing appropriate stringent conditions.

10. Hence, following order:

- i) The bail application is allowed;
- ii) The applicant is directed to be released on bail in connection with Crime No.151 of 2023 registered with Nerul Police Station for the offences punishable under Sections 376(2)(i), 506 of the Indian Penal Code and Sections 5, and 8 of the Protection of Children from Sexual Offences Act, 2012, upon furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or more solvent sureties in the like amount, to the satisfaction of the Trial Court, subject to the following conditions:
 - a) The applicant shall report Nerul Police Station on every first and fifteenth day of every month between 10.00 a.m. and 12.00 noon, until further orders;
 - b) The applicant shall not, in any manner, contact the victim or her family members, directly or indirectly.
 - c) 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.
 - d) The applicant shall cooperate with the prosecution and attend all trial dates regularly.
 - e) The applicant shall not tamper with evidence or influence any witness.
 - f) The applicant shall provide his current residential address and inform the court in case of change of residence.

g) The applicant shall not commit any offence during the pendency of trial, failing which his bail is liable to be cancelled.

h) Any breach of these conditions shall result in the prosecution moving for cancellation of bail before the Trial Court.

11. The bail application stands disposed of in above terms.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 3 July 2025. The corrections in paragraphs 4 and 6 are shown in italicize.