

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

Bail Application No.3571 of 2024

Swapnil Pandurang Dhamdhare
Age: 28 Years, Occ: Agriculturist,
R/at: Sangvi Sandas, Tal – Haveli,
Dist – Pune.
(At present Central Prison, Yerwada).

... Applicant

versus

1. The State of Maharashtra
(At the instance of the P.I. -
Lonikand Police Station, Pune.)

2. XYZ (Original Complainant)
Copy to be served Through
Lonikand Police Station

... Respondents

Mr Aniket Nikam, i/by Mr Sumit Patil, for the applicant.
Mr SV Walve, APP, for respondent No.1/ State.
Ms Anushka Nair, for respondent No.2.
PSI Arjun Bendgude, Lonikand Police Station, is present.

Coram: R.N. Laddha, J.
Date: 1 October 2025.

P.C.:

By this application, the applicant seeks bail under Section 439 of the Code of Criminal Procedure Code, 1973, (CrPC) in connection with CR No.936 of 2023, registered with Lonikand Police Station, Pune City, for offences punishable under Section

376, 376(AB), 377, 292 and 293 of the Indian Penal Code (IPC), and Sections 4, 6 and 12 of Protection of Children from Sexual Offences Act, 2012, along with Sections 3(1)(w)(i)(ii) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. It is the case of the prosecution that, the Complainant and the Applicant are neighbours and are residents of Sangvi Sandas, Haveli, Pune. At the time of the committing the offence, the victims, a boy aged about 8 years and a girl aged about 4 years were playing in front of their house when the applicant lured them into his house and upon isolating them in the house showed them pornographic videos on his mobile phone and then proceeded to undress himself and the victims and subjected them to oral penetrative assault and also enact the pornographic video by laying the victims naked on top of each other and also laid naked on top of the victim girl.

3. Mr. Aniket Nikam, the learned Counsel for the applicant, asserts the applicant's innocence, contending that the applicant has been falsely implicated in this crime, and submits that there are material inconsistencies in the statement of the complainant. He submits that at the initial complaint by the complainant, the applicant was arrested on 27 November 2023,

for allegations under Sections 354 and 354(A) of the IPC. The complainant then changed her statement and stated that, one week after initiating the FIR, the Victims disclosed to the complainant mother about the penetrative assault committed upon them by the applicant, and that the allegations of penetrative assault were made on 4 January 2024, one month after the arrest of the applicant. The learned Counsel further submits that the alleged incident is dated 25 November after which the FIR was filed by the complainant on 26 November, 2023 and the Applicant was arrested on 27th November, 2023, and that there was no delay in the medical examination of the victims which was conducted on the 27 November, 2023 and that the medical report showed no signs of penetrative assault, tenderness, bruises, redness or any other external injuries and that if a child of such tender age is subject to the alleged offence there would have been some injuries that would be revealed in the medical examination. The Counsel further asserts that the initial statements of the victims do not mention penetrative assault, which is further supported by the medical reports of the victims. The learned Counsel further submits that the chargesheet has been filed and the investigation is complete, and that the applicant has been in custody since his arrest for almost 2 years and nothing remains to be discovered or recovered from him. He also submits that the charges have not

been framed. He also submits that the applicant has no criminal antecedents and that the applicant is ready and willing to abide by all conditions that this court sets forth, including the condition that the applicant will not enter the jurisdiction of the concerned Police Station till conclusion of the trial.

4. Mr SV Walve, the Learned Additional Public Prosecutor representing the respondent/ State, opposing the applicant's request, submits that the applicant had previously preferred a bail application with the Sessions Court, Pune, which came to be rejected on 14 March 2024. After which, the present application came to be filed. The learned APP submits that the crime is of a grave and serious nature and that the tender age of the victims must be considered before granting bail to the applicant. The APP also submits that the applicant and the victims are neighbours and that granting bail to the applicant could lead to evidence tampering and that the applicant could influence the witnesses.

5. Ms Anushka Nair, the Learned Counsel for respondent no. 2, submits that the victims are of tender age and the crime committed upon them is of a grave and serious nature, and that the victims would have needed time to process the trauma inflicted upon them before disclosing the full extent of the

incident to their mother. The Counsel also submits that the applicant is the neighbour of the victims and that releasing the applicant on bail would impede the ends of justice.

6. Upon a meticulous perusal of the records, it appears that the applicant was initially apprehended on allegations attracting the provisions of Sections 354 and 354(A) of the IPC. The accusation of penetrative sexual assault surfaced only subsequently, i.e. on 4 January 2024, more than one month after the applicant's arrest in November 2023. The medical examination of the victims was conducted promptly following the registration of the FIR, without any undue delay. The said medical reports do not indicate the presence of external injuries on the private parts of the victims. Furthermore, the victims' initial statements recorded under Section 161 CrPC are silent on any allegation of penetrative sexual assault. These statements are consistent with the findings of the medical examination. It is only in the supplementary statement of the informant, recorded nearly one month after the victims allegedly disclosed the incident to her, that the allegation of penetrative sexual assault finds mention. The informant claims that the victims narrated the said incident to her approximately one week after lodging of the FIR.

7. Moreover, despite the applicant having remained in custody since November 2023, the charge has not yet been framed. In such circumstances, the continued incarceration of the applicant does not appear to be warranted, particularly when the apprehension expressed by the prosecution regarding possible tampering with evidence or influencing of witnesses can be effectively mitigated by imposing appropriate conditions.

8. In view of the foregoing facts and circumstances, this Court finds it appropriate to enlarge the applicant on bail. Accordingly, the following order is passed :

ORDER

- i. The applicant shall be released on bail in CR No. 936 of 2023, registered at Lonikand Police Station, Pune, upon furnishing a PR Bond of Rs.25,000/- with one or more sureties in the like amount.
- ii. The applicant shall not enter the jurisdiction of the concerned Police Station except for attending the Court proceedings till the conclusion of the trial.
- iii. The applicant, himself or through any other person, shall not tamper with the evidence and

exert influence over witnesses.

- iv. The applicant shall not contact the victims in any manner whatsoever.
 - v. The applicant shall regularly attend and cooperate with the jurisdictional Court for the expeditious disposal of the case.
9. This application stands disposed of accordingly.

[R.N. Laddha, J.]