

Shivgan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3781 OF 2024**

Gulab Salim Khan

...Applicant

Versus

State of Maharashtra and Anr.

...Respondents

Mr Mushtaq Shaikh, *with Sameera Kha, Viral Mukte, for the Applicant.*

Ms Poonam P Bhosale, *APP for the Respondent No.1-State.*

Ms Gayatri Pinkyar, *for the Respondent No.2.*

Mr Sanjay Ghag, *PSI attached to Malwani Police Station, Malad, Mumbai present.*

CORAM Dr. Neela Gokhale, J.

DATED: 11th September 2025

PC:-

1. The present Applicant seeks his release on bail in connection with the C. R. No.19 of 2024 dated 4th January 2024 registered with the Malwani Police Station, Malad, Mumbai for the offences punishable under Sections 363, 366A, 376, 376(2)(n), 376(3) of the Indian Penal Code, 1860 and Sections 4, 5(l) and (6) of the Protection of Children From Sexual Offences ('POCSO') Act, 2012.

2. The case of the prosecution as inferred from the FIR, is that the Applicant kidnapped the victim on 3rd January 2024 at 8.00 p.m. from Room No.43, Buddha Nagar, Marvey Cross Road, Kachha Road, Opposite Asmita Jyoti, Malwani, Malad (West), Mumbai. The victim was aged about 13 years and 10 months at that time. It is the further case of the prosecution that when the victim was at the Chhatrapati Shivaji Maharaj Terminus Railway Station, Mumbai, the Applicant got acquainted with her and lured her to marry him. The victim went away with the Applicant without the knowledge of her parents. She stayed with him for a period of about 10 days. He took her to Vasco, Goa where the Police found her and brought her back to Mumbai. It is the case of the prosecution that she was taken out of the lawful custody of her parents by the Applicant, who lured her to go with him by promising to marry her and forced her to have sexual intercourse with him. In these circumstances, the victim's mother made a complaint, pursuant to which the FIR was registered.

3. The Applicant made an application seeking bail before the Sessions Court at Dindoshi, Mumbai. By an order dated 2nd July 2024, the bail application was rejected on consideration of the nature of the crime to be heinous and the very real possibility of the Applicant influencing the victim if he was released on bail. In these circumstances, the Applicant has filed the present bail application seeking the relief as prayed.

4. Mr Mushtaq Shaikh, learned counsel, appears for the Applicant, Ms. Poonam Bhosale, learned APP, represents the State and Ms Gayatri Pinkyar, learned Advocate from the Legal Aid Panel, represents the Respondent No.2.

5. Mr. Shaikh has tendered the deposition of the victim as recorded by the Trial Court. He submits that the victim has specifically stated in her deposition that she had gone with the Applicant on her own and never had sexual intercourse with the Applicant. He thus, states that the offence is not made out and the Applicant be released on bail.

6. Ms. Gayatri Pinkyar, learned Advocate, representing the Respondent No.2, submits that she has spoken with the mother of the Applicant and they are not keen to continue the case against the Applicant, since, the daughter has given the deposition that, there was no forcible sexual intercourse of the Applicant with the victim.

7. The learned APP, however, has pointed out the statement of the victim as recorded under Section 164 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') wherein the victim has specifically stated that on 7th January 2024 when she was taken to Vasco by the Applicant, the Applicant time and again forced sexual relations on her. Ms. Bhosale also submits that the charges have been framed and since, the offence is grave, the present application be rejected.

8. Heard the learned counsels appearing for the respective parties and perused the documents with their assistance.

9. The deposition of the victim as recorded by the Sessions Court clearly demonstrates that the victim has specifically denied that there was any forcible sexual intercourse by the Applicant with her. In fact, the answer of the victim to Question No.47 as posed by the Sessions Court, clearly establishes that the Applicant never committed sexual intercourse with the victim. In the entire deposition, the victim has not supported the case of the prosecution. Undoubtedly, in her statement recorded under Section 164 of the Cr.P.C., she has admitted that the Applicant frequently kept forcible sexual relations with her. However, now before the Trial Court, she has gone back on her statement. It is also relevant to note that during the entire period, the Applicant has been in judicial custody and had no opportunity to influence the victim or her family members. The Applicant is in custody for one year and eight months. Since the deposition of the victim has already been recorded, there is no purpose in the continued incarceration of the Applicant. However, since, there is discrepancy in 164 statement of the victim and in her

deposition before the trial Court, it will be in the interest of justice, if the Applicant stays away from the locality in which the victim and her family reside.

10. Considering the facts in the present case and the aforesaid discussion, I find that a case is made out for grant of bail and it is directed as under:

ORDER

i) The Applicant be enlarged on bail, on executing PR Bond in the sum of Rs.50,000/ with one or two local sureties in the like amount;

ii) The Applicant shall attend the Trial Court concerned on each and every date unless specifically exempted by the orders of the Trial Court concerned and shall not seek any adjournments;

iii) If the Applicant has not deposited his passport, the Applicant shall deposit the same with the concerned Police Station;

iv) The Applicant shall not leave India, without the permission of the trial Court;

v) The Applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

vi) The Applicant shall inform his latest place of residence and mobile number immediately after being released and / or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

vii) The Applicant shall not make any attempts to re-associate with the victim girl in any manner

whatsoever nature including through any device or in person;

viii) The Applicant to co-operate with the conduct of the trial;

ix) The Applicant shall not enter the jurisdiction of the Malwani Police Station, Malad;

x) Any infraction of the aforesaid conditions shall entail cancellation of bail.

11. Application is allowed in the above terms and is accordingly disposed of.

12. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the learned trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

(Dr. Neela Gokhale, J)