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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3861 OF 2024

Imtiyaz Liyakat Lehri ... Applicant
V/s.
The State of Maharashtra & Anr. ... Respondents

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GANESH
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ATUL GANESH
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Mr. Atul Kumar M. Pandey for the applicant.

Mrs. Rajashree V. Newton, APP for respondent No.1-
State.

Ms. Vilasini Balasubramanian for respondent No.2-
victim (appointed as Legal Aid).

Mr. S.S. Ghag, PSI Pairavi Adhikari, Malawani Police
Station, Mumbai, is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 30, 2025

P.C.:

1. Through this bail application filed under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."), the accused person seeks regular bail in Crime Register Number 387 of 2024 registered at Malvani Police Station, Mumbai. The case involves charges under Sections 376 and 354 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") along with Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. As per the prosecution case, the complainant/victim has filed a complaint stating that she is 19 years old and lives with her family. The accused person is originally from Bihar state. The complainant has known the accused since the year 2020, and they were in regular contact with each other. Due to this, a close relationship developed between them. On one occasion, the accused promised to marry her and established physical relations with her. After this, the accused stopped maintaining contact with the victim. Later, the victim came to know that the accused was already married and had one son. She also discovered that he was chatting with many other girls. When the victim was studying in 10th standard, during September-October 2022, the accused established physical relations with her. Though she resisted, the accused convinced her by promising marriage. In May 2023, the accused touched her chest. In June 2023, he inserted his finger into her private parts and pressed her chest. When the victim's father met the accused and inquired about marriage, he came to know that the accused was already married.

3. The learned Advocate appearing for the applicant has submitted that according to the victim's own statement, she was in a relationship with the applicant for more than four years. However, there was no sexual intercourse between them. The incident which the prosecution claims constitutes an offence under Section 376 allegedly took place in June 2023, but the FIR was lodged only in March 2024. According to the prosecution, the applicant had hidden the fact of his marriage. However, both parties belong to the Muslim community. The Defence submits that

the age of the applicant in June 2023 was more than 23 years. The applicant has no previous criminal record against him. Therefore, it is prayed that the applicant should be granted regular bail.

4. On the other hand, the learned Additional Public Prosecutor and the learned Advocate appointed to represent the victim have submitted that the applicant developed a relationship with the minor girl by promising to marry her. However, when she realized that the applicant was already married, the First Information Report was filed. It is therefore submitted that the incident constitutes offences under Sections 354 and 376 of the IPC. Though the incident took place in June 2023, the report was lodged later because the victim was hoping that the applicant would marry her. Therefore, it is submitted that this bail application should be rejected.

5. Having heard the learned counsels for both sides and after carefully examining the material on record, this Court proceeds to analyze the various factors that are relevant for determining whether the applicant is entitled to be released on bail. The law relating to grant of bail is well-settled, and this Court must balance the competing interests of personal liberty guaranteed under Article 21 of the Constitution of India against the need to ensure that justice is not derailed and that the accused does not misuse the liberty granted to him.

6. This Court acknowledges that the allegations against the applicant are serious in nature, involving charges under Sections 376 and 354 of the IPC read with Sections 8 and 12 of the POCSO

Act, 2012. Sexual offences, particularly those involving minors, are viewed with utmost gravity by the courts, and rightfully so. However, the mere seriousness of the charge cannot be the sole determining factor for denial of bail. The court must examine the totality of circumstances in each case.

7. Upon careful examination of the facts, this Court observes that while the charges are serious, the specific circumstances of this case present a different picture from the typical cases involving sexual assault. The relationship between the parties was not one of force or coercion but appears to have been consensual over an extended period of time.

8. A critical aspect that emerges from the record is the consensual nature of the relationship between the parties. The complainant herself admits that she has known the accused since 2020 and that they were in regular contact with each other, leading to a close relationship. The relationship continued for over four years, which suggests that it was not a case of sudden assault or coercion, but rather a relationship that developed over time with the mutual consent of both parties.

9. Furthermore, the complainant states that she is currently 19 years old. If the alleged incidents took place in June 2023, and considering that she was in 10th standard during September-October 2022, it can be reasonably inferred that she was likely above 16 years of age at the time of the alleged incidents. While this does not absolve the applicant of the charges, it is a relevant factor in determining the nature of the relationship and the

question of consent. The fact that the victim's father met the accused to discuss marriage indicates that the relationship was not clandestine and was known to the family members. This further supports the contention that the relationship was consensual rather than forced.

10. One of the most significant factors that weighs heavily in favour of the applicant is the substantial and unexplained delay in lodging the First Information Report. The alleged incident of sexual assault is said to have occurred in June 2023, but the FIR was registered only in March 2024, constituting a delay of approximately nine months. While the prosecution attempts to explain this delay by suggesting that the victim hoped the applicant would marry her, this explanation raises more questions than it answers. If the applicant had indeed committed the serious offence of rape, it is highly improbable that the victim would continue to hope for marriage with her alleged rapist for such an extended period. This delay significantly undermines the prosecution's case and raises doubts about the genuineness of the allegations.

11. The record clearly establishes that the applicant has no previous criminal history or antecedents. This is a significant factor in his favour as it indicates that he is not a habitual offender and is unlikely to commit similar offences while on bail. The absence of criminal antecedents also suggests that the applicant is not a person who poses a threat to society and can be trusted to abide by the conditions of bail.

12. The prosecution's case is primarily built on the allegation that the applicant deceived the victim by promising marriage while concealing his existing marital status. While deception in matters of marriage can indeed vitiate consent in certain circumstances, the courts must examine whether such deception, in the given facts, transforms a consensual relationship into rape.

13. In the present case, the relationship continued for over four years, and both parties belong to the same muslim community. The fact that the victim's father approached the accused for marriage suggests that marriage was indeed a possibility that was being considered by both families. This indicates that the promise of marriage, if made, was not necessarily false from the beginning.

14. There is nothing on record to suggest that the applicant is a flight risk or that he would tamper with evidence if released on bail. The applicant has been residing in Mumbai and has not attempted to flee despite being aware of the allegations against him. His roots in the community and his employment status, if any, further reduce the likelihood of his absconding.

15. Moreover, the investigation appears to be substantially complete, and most of the evidence in such cases is testimonial in nature. The victim has already been examined, and her statement has been recorded. There is little scope for tampering with such evidence, particularly when appropriate conditions can be imposed to prevent any contact between the applicant and the witnesses.

16. After carefully weighing all the factors discussed above, this Court arrives at the conclusion that the applicant has made out a

prima facie case for the grant of bail. The consensual nature of the relationship spanning over four years, the substantial and unexplained delay in filing the FIR, the absence of any criminal antecedents, the constitutional mandate favoring personal liberty, and the absence of any flight risk or likelihood of evidence tampering, collectively outweigh the gravity of the charges in the present circumstances.

17. Hence, following order is passed:

- i) The bail application is allowed;
- ii) The applicant is directed to be released on regular bail in connection with Crime Register No.387 of 2024 registered with Malvani Police Station, Mumbai for offences punishable under Sections 376, 354 of the IPC read with Sections 8, and 12 of the POCSO Act, 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 to the Malvani Police Station once in a month, specifically on 1st Monday of each month, between 10:00 a.m. and 12:00 noon, until further orders.
 - (b) The applicant shall not enter the jurisdiction of the Malvani Police Station, Mumbai, except for marking evidence until further orders.
 - (c) The applicant shall not leave the territorial jurisdiction

of the Trial Court without its prior written permission.

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

(e) The applicant shall cooperate with the prosecution and attend all trial dates regularly.

(f) The applicant shall not tamper with evidence, or directly or indirectly contact, influence, threaten, or intimidate any witness, particularly family members of the deceased.

(g) The applicant shall provide his current residential address and inform the court in case of change of residence.

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

(i) 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.

(j) In case of any breach of the conditions mentioned above, the prosecution shall be at liberty to move for cancellation of bail.

18. The bail application is allowed and disposed of.

(AMIT BORKAR, J.)