

AGK

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

BAIL APPLICATION NO.3900 OF 2024

Prakash Dadarao Suryavanshi ... Applicant
V/s.
 The State of Maharashtra & Anr. ... Respondents

Mr. Vishal Hegde with S.V. Rao, Ramakrishna Akule, Aiswarya Jose, Anuja Apte & Rohit Maurya i/by Samudra Legal LLP for the applicant.

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

Mr. Ishrat Ali Khan with Ms. Tarannum Ana for respondent No.2-victim.

Mr. S.S. Ghag, PSI (Pairavi Adhikari) and Mr. Sandeep Kale, PSI, Malawani Police Station, Mumbai, are present.

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CORAM : AMIT BORKAR, J.

RESERVED ON : AUGUST 18, 2025

PRONOUNCED ON : AUGUST 22, 2025

ORDER:

1. By the present bail application filed under Section 483 of the *Bhartiya Nagarik Suraksha Sanhita, 2023* (for short “BNSS”), the applicant is seeking regular bail in connection with Crime Register No.166 of 2022 registered with Malwani Police Station, Mumbai. The said crime has been registered for offences punishable under Sections 376, 376(3), 377, and 354 of the *Indian Penal Code, 1860* (for short “IPC”), read with Sections 4, 8, and 12 of the *Protection of Children from Sexual Offences Act, 2012* (for short “POCSO

Act”).

2. As per the prosecution case, on 10th March 2022, at about 7.15 p.m., the accused–Prakash Dadarao Suryavanshi–is alleged to have committed sexual assault upon the minor victim at the residence of the complainant in Malwani, Mumbai. It is alleged that the complainant, Mrs. Nagma Sohail Khan, who is the mother of the victim, witnessed the act. When she confronted the accused, he allegedly pushed her aside and fled from the spot. The FIR further records that the accused had been residing with the complainant’s family since December 2019 and was known to them. The complainant thereafter approached Malwani Police Station and lodged the report seeking legal action.

3. Learned Advocate for the applicant invited my attention to the annexures to the bail application and submitted that the complainant has a history of lodging several FIRs against different persons including her previous husband. Information obtained by the applicant under the Right to Information Act from State Authorities shows that there are as many as 9 FIRs, some of which are supported by bail orders placed on record. It is submitted that the FIR itself discloses that the complainant was in a live-in relationship with the applicant. It is further pointed out that though the FIR alleges that the applicant fled after the incident, there is no CCTV footage placed on record to support the claim.

4. It is the case of the applicant that the prosecution is mala fide. The defence of the applicant is that the FIR has been lodged only because of his refusal to convert to the religion of the

complainant. It is submitted that in the earlier prosecution also, the complainant had levelled similar allegations against her previous husband on the ground of refusal to convert. It is also pointed out that in another prosecution under the POCSO Act, the complainant's step-daughter herself stated that she was harassed and persuaded by the complainant to file false cases. Reliance is also placed on an order of the Division Bench of this Court, wherein the Bench recorded the unwillingness of the complainant's children to stay with her, and noted that the children had openly expressed their hostility towards the complainant and affection towards their father.

5. Learned counsel further submits that the applicant has been in custody since 11th March 2022. Although his earlier bail application was rejected, the trial has not yet commenced. The charge is still not framed, and the prosecution has cited 18 witnesses. It is contended that in such a situation, continued custody of the applicant would amount to denial of his right to life and personal liberty under Article 21 of the Constitution.

6. Per contra, the learned Advocate appearing for the complainant submits that the earlier bail application filed by the applicant has already been rejected by a Coordinate Bench of this Court, and in the absence of any material change in circumstances, the present application cannot be entertained on merits. He contends that the allegations regarding forced conversion are baseless and that there was never any live-in relationship between the applicant and the complainant. According to him, the FIRs against her earlier husband and the ground floor occupant were

lodged due to genuine disputes. Hence, according to him, the applicant is not entitled to bail.

7. The learned Additional Public Prosecutor has also opposed the bail application. It is submitted that the medical evidence prima facie supports the case of the prosecution and the Chemical Analyser's report is awaited. Considering the rejection of the earlier bail application and absence of fresh material change in circumstances, it is submitted that the present application also deserves rejection.

8. I have considered the rival submissions and perused the record. It is true that the applicant's earlier bail application was rejected by this Court. However, it is equally well settled that rejection of an earlier bail application does not create an absolute bar against filing of a subsequent bail application.

9. The Supreme Court in *State of Maharashtra vs. Captain Buddhikota Subha Rao* (1989) 3 SCC 223 and *Kalyan Chandra Sarkar vs. Rajesh Ranjan* (2004) 7 SCC 528 has held that successive bail applications are maintainable where there is a material change in circumstances or where the Court finds that continued detention would result in violation of Article 21 of the Constitution.

10. In the present case, there is a clear change in circumstances. The applicant has now remained in custody for more than three years. The charge has not been framed. The prosecution has cited 18 witnesses and there is no likelihood of the trial concluding in the near future. This prolonged incarceration, which was not

before the Court when the earlier application was rejected, itself constitutes a substantial change in circumstances.

11. The Supreme Court in *Shaheen Welfare Association vs. Union of India* (1996) 2 SCC 616 and *Hussain vs. Union of India* (2017) 5 SCC 702 has recognised that delay in trial and prolonged pre-trial custody are valid grounds for bail even in cases of serious offences. Thus, the present application is maintainable.

12. Having addressed maintainability, the merits of the application now fall for consideration. The applicant has been in custody since 11th March 2022. To continue his incarceration indefinitely without progress in trial would amount to pre-trial punishment, which is impermissible in law.

13. The learned Advocate for the applicant submitted that the complainant has a history of lodging several FIRs against different persons including her previous husband. To substantiate this contention, the applicant has placed on record information obtained under the Right to Information Act from the State Authorities, which indicates that there are as many as nine FIRs lodged by the complainant on different occasions. Some of these cases are supported by bail orders produced on record.

14. According to the applicant, this pattern of repeatedly lodging criminal cases against different persons raises a genuine doubt about the bona fides of the present prosecution. It is argued that though every FIR has to be judged on its own merits, the background and conduct of the complainant cannot be ignored while considering the question of bail. The learned Advocate

submits that such a history suggests a possibility of misuse of the criminal justice machinery to settle personal scores or to exert pressure, and therefore, the allegations in the present case ought to be approached with caution.

15. It is further contended that the criminal law cannot be permitted to be used as a weapon of harassment. While this Court is not expected to conduct a roving inquiry into the genuineness of past cases at the stage of bail, the cumulative effect of such repeated prosecutions is a relevant factor in assessing whether continued incarceration of the applicant is justified.

16. The background of the complainant, as brought on record, indicates that she has been a party to multiple litigations and criminal complaints in the past. Though this, by itself, cannot prove false implication, it does show that the prosecution case requires careful scrutiny during trial.

17. The Supreme Court in *Satender Kumar Antil vs. CBI* (2022) 10 SCC 51 has emphasised that personal liberty cannot be curtailed for an indefinite period and that bail should ordinarily be granted when trial is not proceeding expeditiously.

18. While the seriousness of the charge is an important factor, it cannot override the fundamental right to speedy trial under Article 21.

19. At this stage, it is not necessary to undertake a detailed evaluation of the evidence. The medical report and other material will have to be tested at the trial. What is relevant for deciding this application is whether the applicant's continued custody is

justified. There is no material to suggest that the applicant would abscond or tamper with evidence. His roots in society and permanent residence in Mumbai are not disputed. Appropriate conditions can safeguard the prosecution's concerns.

20. Considering (i) the long period of custody since March 2022, (ii) delay in commencement of trial, (iii) the number of witnesses, and (iv) the right to speedy trial under Article 21, I am of the view that the applicant has made out a case for grant of bail.

21. In view of the above, the following order is passed:

(a) The bail application is allowed.

(b) The applicant—Prakash Dadarao Suryavanshi—is directed to be released on bail in connection with Crime Register No.166 of 2022 registered with Malwani Police Station, Mumbai, on his executing a personal bond of ₹50,000/- (Rupees Fifty Thousand only) with one or two sureties of the like amount to the satisfaction of the trial Court.

(c) The applicant shall not, directly or indirectly, contact or attempt to influence the complainant, the victim, or any other prosecution witnesses.

(d) The applicant shall attend the trial regularly and shall not seek unnecessary adjournments.

(e) The applicant shall mark his presence before the Investigating Officer of Malwani Police Station once in a month, on the first Saturday of every month between 11.00

a.m. and 1.00 p.m., till framing of charge.

(f) The applicant shall not leave India without prior permission of the trial Court and shall deposit his passport, if any, before the trial Court within two weeks.

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

22. It is clarified that the observations made herein are only for the purpose of deciding the present bail application. The trial Court shall decide the case strictly on its own merits, uninfluenced by any observations herein.

23. The bail application is allowed and disposed of.

(AMIT BORKAR, J.)