

Shabnoor

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

BAIL APPLICATION NO.4594 OF 2024

Bharati @ Rakhi

... Applicant

V/s.

State of Maharashtra

... Respondent

Mr. Vishal V. Rankhambe with Aparna V. Rankhambe
with Afsar Ansari, for the Applicant.

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

Ms. Devyani Kulkarni, for respondent No.2 (appointed
as legal aid).

Mr. Someshwar Chougule, Marine Drive Police Station.

CORAM : AMIT BORKAR, J.

DATED : JULY 4, 2025

P.C.:

1. The present bail application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973. The applicant seeks his release on bail in connection with Crime Register No. 260 of 2023 registered with Marine Drive Police Station, Mumbai. The allegations against the applicant include commission of offences punishable under Sections 363, 363-A, 376(2)(i)(j), and 376(3) of the Indian Penal Code, 1860. In addition, provisions of Sections 4, 6, 8, and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) have also

been invoked in the present case.

2. The briefcase of the prosecution is that the applicant, along with co-accused Nos.1 and 2, allegedly kidnapped a minor girl from Delhi and brought her to Mumbai. As per the prosecution, the victim was initially found in an abandoned condition on the road, and thereafter, it was the applicant who brought her to Mumbai. It is further alleged that while the minor victim was staying in the applicant's house, co-accused Nos.1 and 2 committed sexual assault on her. After completion of investigation, a charge-sheet has been filed. However, the charge that has been framed against the applicant is under Section 363 of the IPC alone. The applicant had earlier preferred an application for bail before the learned Sessions Court, which came to be rejected. Hence, being aggrieved, the applicant has approached this Court for seeking regular bail.

3. Learned Advocate appearing on behalf of the applicant has submitted that the materials placed on record, even if taken at their face value, do not disclose the essential ingredients required to attract Section 363 of the IPC. It is argued that even as per the prosecution case, the girl was already found in an abandoned condition on the road and was thereafter taken to Mumbai by the applicant. The learned counsel submits that there is no allegation that the applicant himself had kidnapped or enticed the girl from lawful guardianship. It is further submitted that there is no direct allegation of sexual assault against the applicant. In these circumstances, it is prayed that the applicant be enlarged on bail.

4. On the other hand, the learned APP, along with the learned Advocate appointed to appear on behalf of the victim, has opposed the grant of bail. It is submitted that the offences alleged are of serious nature, and the victim is a minor girl, who is both deaf and mute. It is contended that even if the applicant has not directly committed sexual assault, his house was knowingly used as a place where the minor girl was subjected to repeated sexual exploitation by co-accused Nos.1 and 2. The prosecution also pointed out that the applicant has criminal antecedents, including involvement in offences punishable under Sections 302 and 426 of IPC. Considering the gravity of the offence, the vulnerability of the victim, and the role played by the applicant, it is prayed that the bail application deserves to be rejected.

5. I have carefully considered the submissions made by both sides and perused the material placed on record. At the outset, it is to be noted that although the FIR invoked several serious sections including provisions of the POCSO Act, the charge that has ultimately been framed against the present applicant is only under Section 363 of the IPC, which relates to kidnapping. There is no charge framed against him under the provisions of the POCSO Act or for any offence of sexual assault.

6. It is also seen from the charge-sheet that the allegation of sexual assault pertains to accused Nos.1 and 2, and not to the applicant. The role attributed to the present applicant is that he brought the minor girl to Mumbai after finding her in an abandoned condition. There is no material on record to indicate that the applicant enticed or removed the victim from the lawful

custody of her guardian with intent to cause harm or for any illegal purpose. Prima facie, it appears that the ingredients of Section 363 IPC are not clearly made out against the applicant.

7. As far as the allegation that the house of the applicant was used by co-accused for committing sexual assault is concerned, there is no specific material to show that the applicant had knowledge about the illegal acts being committed by them. The prosecution has not produced any evidence to suggest that the applicant was present during the commission of the said offence or that he had facilitated it.

8. It is true that the nature of the allegations is serious, and the victim is a minor girl who is deaf and dumb. However, seriousness of the offence alone cannot be the sole ground to deny bail, especially when the material against the applicant is not sufficient to connect him to the more serious allegations. The Hon'ble Supreme Court in various decisions has held that the liberty of an individual is of paramount importance and bail cannot be denied as a matter of punishment at the pre-trial stage.

9. As regards the past criminal antecedents of the applicant, the prosecution has not brought on record any conviction. Mere registration of previous cases, without any conviction or pending trial being relevant to the facts of the present case, cannot be a ground for indefinite incarceration.

10. The applicant is in custody since a considerable period and trial is likely to take time. The charge against him is limited to Section 363 IPC. There is no recovery or further investigation

pending qua the applicant. The possibility of the applicant fleeing away or tampering with evidence can be taken care of by imposing strict conditions.

11. In view of the above discussion and considering the limited role attributed to the applicant, I am of the opinion that this is a fit case to grant bail to the applicant, subject to certain conditions.

12. Hence, the following order is passed:

(a) The Bail Application is allowed.

(b) The applicant, shall be released on bail in connection with Crime Register No. 260 of 2023 registered with Marine Drive Police Station for offences punishable under Sections 363, 363-A, 376(2)(i)(j), 376(3) of the IPC, and Sections 4, 6, 8 and 12 of the POCSO Act, upon furnishing a Personal Bond of ₹25,000/- (Rupees Twenty-Five Thousand only) along with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court, subject to the following conditions:

(c) The applicant shall not tamper with evidence, or directly or indirectly contact, influence, threaten, or intimidate any witness.

(d) The applicant shall attend all proceedings before the Trial Court regularly, unless exempted by the Court on valid grounds supported by sufficient cause.

(e) The applicant shall report to the Marin Drive Police Station on the first Monday of every month between 10.00

a.m. and 12.00 noon, until further orders.

(f) The applicant shall not leave the territorial jurisdiction of the Trial Court without its prior written permission.

(g) The applicant shall not commit any offence or engage in any criminal activity during the pendency of the trial.

(h) The applicant shall, at the time of furnishing surety, provide her 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.

13. The Bail Application is disposed of in above terms.

(AMIT BORKAR, J.)