

Shabnoor

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

BAIL APPLICATION NO.4896 OF 2024

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Santosh Kedarnath Gupta

... Applicant

V/s.

State of Maharashtra & Anr.

... Respondents

Mr. Aniket Vegal a/w Ms. Savvy Klhekar a/w Ms.
Mamta Hasrajani a/w Mr. Kunal Pednekar for the
Applicant.

Mr. Sagar Agarkar, APP for State – respondent No.1.

Ms. Devyani H. Kulkarni for respondent No.2.

Mr. K. M. Dhanawade, PSI Navghar Police Station.

CORAM : AMIT BORKAR, J.

DATED : JUNE 16, 2025

P.C.:

1. This is an application preferred by the applicant, seeking the discretionary relief of bail under the provisions of Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."). The application pertains to Crime Register No. 394 of 2024, registered at Navghar Police Station. The applicant stands arrayed as an accused in a case where serious charges have been registered against him under Sections 363 (kidnapping), 366 (kidnapping, abducting or inducing woman to compel her marriage, etc.), 354 (assault or criminal force to woman with intent to outrage her modesty), 376 (rape), 376(2)(n) (repeated

rape) and 506 (criminal intimidation) of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). Additionally, the applicant is also charged under Sections 4 (punishment for penetrative sexual assault), 8 (punishment for sexual assault), and 12 (punishment for sexual harassment) of the Protection of Children from Sexual Offences Act, 2012 (commonly referred to as the "POCSO Act"), indicating the involvement of a minor victim.

2. The gravamen of the prosecution's case, as discernible from the First Information Report (FIR) and other investigative material, is primarily based on the statement of the victim, who resides in the same society as the 41-year-old applicant. It is alleged that in March 2023, during the occasion of the Holi festival, the applicant invited the victim to his residence, where he embraced her and subjected her to inappropriate touching. Following this incident, he allegedly threatened the victim with dire consequences, including causing harm to her family. Owing to these threats, the victim reportedly refrained from disclosing the incident to anyone. It is further contended by the prosecution that on 7th February 2024, the applicant forcibly took the victim to Gorai beach on his motorcycle, where he committed forcible sexual intercourse with her. During this act, he allegedly captured a video and subsequently threatened to make the said video viral, thereby compelling her silence. Thereafter, the applicant is alleged to have repeatedly engaged in sexual intercourse with the victim. A significant development in the allegations is dated 27th June 2024, when the applicant purportedly proposed a live-in relationship with the victim and forcibly coerced her to accompany him. It is

stated that the applicant forcibly took her to Madgaon by railway and subsequently to Karwar in the State of Karnataka. There, he booked a hotel room and again committed forcible sexual intercourse with the victim. On 29th June 2024, the applicant is alleged to have repeatedly subjected her to sexual intercourse. Distraught by these events, the victim ultimately lodged a police report on 2nd July 2024. Pursuant to the registration of the FIR, the applicant was arrested on the very same day, i.e., 2nd July 2024. Aggrieved by the rejection of his bail application by the learned Sessions Judge, the applicant has now approached this Hon'ble Court seeking similar relief.

3. The learned advocate appearing on behalf of the applicant has vehemently submitted that the birthdate of the prosecutrix is 5th March 2006. Therefore, she attained the age of majority on 5th March 2024. It is contended that at the time of the first alleged incident of inappropriate touching (March 2023), and the subsequent incident on 7th February 2024, she was approximately 17 years and 11 months old, nearing the age of majority. The learned advocate further argued that, upon an holistic consideration of the facts and circumstances of the case, no specific role attributing forcible sexual intercourse or any act other than the alleged threat of making a video viral (which, he suggests, points towards a consensual relationship), can be firmly established against the applicant at this stage. It is emphasized that the allegations of forcible sexual intercourse and the threat of making the video viral are matters that require meticulous scrutiny and proof during the course of a full-fledged trial. It is also

highlighted that the applicant does not possess any criminal antecedents, and there is no apprehension that he would abscond from justice, tamper with the evidence, or influence the witnesses if enlarged on bail. Thus, the learned advocate for the applicant pressed for his release on bail.

4. Per contra, the learned Additional Public Prosecutor (APP) appearing for the State, ably assisted by the learned advocate appointed to represent the victim, has strongly opposed the grant of bail to the applicant. The primary ground for objection hinges on the egregious nature and gravity of the offences alleged against the applicant. It is submitted that the applicant has been booked under stringent provisions, including Sections 4 and 8 of the POCSO Act, along with serious sections of the IPC such as 363, 366, 354, 376, 376(2)(n), and 506. Given the severity of these charges, which involve alleged sexual assault and repeated acts of rape on a minor, it is contended that the applicant is not deserving of the discretionary relief of bail at this preliminary stage. The prosecution apprehends that releasing the applicant on bail would not only prejudice the ongoing investigation but also pose a threat to the safety and well-being of the victim.

5. Upon a thorough and careful perusal of the chargesheet, alongside the statements recorded from the witnesses, and all other material evidence placed on record, certain facts have come to the fore, necessitating a nuanced approach in considering the present bail application. It appears that the first alleged incident, as narrated in the victim's statement, occurred on 9th July 2023, wherein the applicant is accused of inappropriately touching the

victim. This specific allegation requires further examination during the trial process to ascertain its veracity and the circumstances surrounding it.

6. Subsequently, a second incident is alleged to have taken place on 7th February 2024. It is pertinent to note at this juncture that on this particular date, the applicant's age was recorded as 17 years and 11 months, placing him on the cusp of attaining majority. The gravity of this second allegation is significant, involving claims that the applicant took the victim to Gorai beach on a Pulsar bike, subsequently booked a hotel room, and thereafter forcibly engaged in sexual intercourse with the victim. Furthermore, it has been brought to the Court's attention that the relationship, where the applicant allegedly took the victim under the promise of a live-in relationship, appears to pertain to the period after the victim had attained the age of majority. Whether these promises were indeed false at the inception of the relationship is a critical aspect that cannot be definitively determined at this preliminary stage; it is a matter that needs to be established convincingly through evidence and cross-examination during the full-fledged trial. The Court, therefore, must consider these distinct factual matrices, understanding that while serious allegations exist, the ultimate truth regarding intent and consent in certain phases of the relationship remains to be proved beyond reasonable doubt.

7. However, having given due consideration to the overall facts and circumstances of the case, including the nature of allegations and the applicant's age at the time of the second incident, and

most significantly, in the absence of any criminal antecedents against the applicant – meaning he has no prior record of similar or any other offences – this Court is of the considered opinion that the applicant deserves to be released on bail. The lack of a past criminal history weighs in favour of granting liberty, as it indicates that the applicant may not be a habitual offender or a danger to society if released.

8. Nevertheless, the concerns regarding the safety and well-being of the victim and her family are paramount. Therefore, to ensure that there is absolutely no misuse of the liberty granted by this Court, and to alleviate any apprehension of threat or undue influence being exerted upon the victim or her family members, it becomes imperative to impose appropriate stringent conditions. These conditions are designed not as punitive measures, but as a protective shield for the victim and to ensure the smooth conduct of the trial, thereby striking a balance between the applicant's right to liberty and the demands of justice.

9. In view of the detailed discussion and the reasoning provided above, the following order is hereby passed:

(a) The present Bail Application filed by the applicant is hereby allowed.

(b) The applicant, Santosh Kedarnath Gupta, is forthwith directed to be released on bail upon executing a personal bond of ₹50,000/- (Rupees Fifty Thousand only), with one or more solvent sureties in the like amount. The said bond and sureties shall be furnished to the satisfaction of the

learned Trial Court.

(c) The applicant shall not, in any manner whatsoever, contact the victim or her family members, either directly or indirectly, throughout the pendency of the trial.

(d) It has been brought to the attention of this Court that the applicant is currently residing on rent within the same society as the victim. To further ensure distance and prevent any inadvertent contact or apprehension, the applicant shall make necessary arrangements to reside beyond the territorial jurisdiction of the Navghar Police Station within a period of two months from the date of this order.

(e) The applicant shall report to the Navghar Police Station on the first Monday of every month, strictly between the hours of 10:00 a.m. and 12:00 noon, until further orders from this Court or the Trial Court.

(f) The applicant shall diligently attend all the trial dates regularly and shall fully cooperate with the prosecution during the entire conduct of the trial, ensuring no delays are caused due to his absence or non-cooperation.

(g) The applicant shall not tamper with any evidence related to this case, nor shall he attempt to influence any witnesses in any manner, either directly or indirectly.

(h) The applicant shall furnish his present residential address to the learned Trial Court and shall also promptly inform the Court in the event of any change in his place of residence

during the pendency of the trial.

(i) The applicant shall not commit any offence of any nature whatsoever during the entire pendency of the trial.

10. The Bail Application accordingly stands disposed of in terms of the aforementioned directions.

(AMIT BORKAR, J.)