

Shabnoor

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

BAIL APPLICATION NO. 5157 OF 2024

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Chandrakant Balu Kheloji,
Ganesh Balu Kheloji, &
Nilesh Dinesh Chavan

... Applicants

V/s.

State of Maharashtra & Anr.

... Respondents

Mr. Gaurav Parkar, for the applicants.

Ms. Rajashree V. Newton, APP for the State –
respondent No.1.

Ms. Komal Sinha, for respondent No.2 (Appointed as
Legal-Aid).

Mr. Kunal Chaudhari, Mahsala Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 23, 2025

PC.:

1. The present bail application has been filed by the applicants under Section 439 of the Code of Criminal Procedure, 1973, seeking their release in connection with Crime Register No. 48 of 2024 registered at Mahsala Police Station. The applicants are booked for offences punishable under Sections 363, 366A, 354, 376, 468, 471, 323, 504 and 34 of the Indian Penal Code, 1860, under Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, and under Sections 9, 10, 11 and 12 of the Child Marriage Prohibition Act.

2. As per the prosecution case, on 30 April 2024, while the victim was at her neighbour's house, applicant No.2 and a co-accused came there. They inquired about the victim's marriage. The victim replied that she had not attained the legal age of marriage and would have to consult her parents. Applicant No.2 and the co-accused then suggested that the victim should marry applicant No.1, who is the brother of applicant No.2. On 1 May 2024, applicant Nos.1 and 2 again met the victim and her neighbour. They informed that applicant No.1 liked the victim and wanted to marry her. The victim again stated that she would first speak to her parents. Applicant Nos.1 and 2 then asked her to visit their house at Dighi-Koliwada so that she could thereafter talk to her parents. On the same day, at about 6 p.m., applicant No.2 and the co-accused met the victim and asked her to bring a copy of her Aadhaar Card. They then took her to their house at Dighi-Koliwada. There, the victim was told that she would be taken to Mumbai the next day and her marriage with applicant No.1 would be decided. That night, while the victim was sleeping, applicant No.1 came near her and committed sexual intercourse with her. On 2 May 2024, the victim was taken to Bandra, Mumbai by applicant Nos.1 and 2 along with the co-accused. Despite being underage, she was married to applicant No.1. Thereafter, they returned to the matrimonial house, where applicant No.1 again committed intercourse with her.

3. It is further alleged that on 8 May 2024, applicant No.3 visited the house of applicant Nos.1 and 2. While he was there, he committed sexual intercourse with the victim. The victim informed

applicant No.1 about this, but instead of taking action, applicant No.1 told her to continue relations with applicant No.3. On 9 May 2024, applicant No.3 again came to the house and repeated the act. Out of fear, the victim did not disclose this to her family. On 11 May 2024, applicant No.2 asked the victim to accompany him and his daughter to the beach. She agreed. At the beach, applicant No.2 touched her inappropriately and kissed her, while applicant No.1 assaulted her. On 14 May 2024, the applicants brought the victim to Mumbai, where she was made to sign a divorce deed. She was then left at Wadala, Mumbai. The victim met her parents and narrated the incidents. On these allegations, the present FIR came to be registered against the applicants.

4. The learned advocate for the applicants has drawn attention to the FIR, where it is alleged that applicant No.1 committed forcible sexual intercourse with the victim from 1 May 2024 till 5 May 2024 on a daily basis. However, in the statement of the victim recorded under Section 164 of Cr.P.C., these allegations are absent. It is further pointed out that there are material inconsistencies in the statements under Sections 161 and 164 Cr.P.C. even with respect to applicant No.2. Regarding applicant No.3, the incident is alleged on 8 May 2024, but the manner of incident as described in the FIR and in the statement under Section 164 Cr.P.C. is inconsistent. It is further submitted that applicant No.1 himself had lodged an FIR against another person aged 82 years alleging an incident dated 23 March 2024, where medical evidence showed that the accused was incapable of sexual intercourse. Learned counsel submitted that the victim was around 17 years of age at

the time of the alleged incidents. The applicants were misled by the parents of the victim at the time of marriage. Thereafter, a customary divorce was executed through a divorce deed. The applicants have been in custody since 17 May 2024. Investigation is complete and charge-sheet is filed. Hence, further pre-trial detention is not necessary.

5. On the other hand, the learned APP and the learned advocate for the victim have opposed the bail. They submitted that the informant was a minor at the time of the alleged incidents. They argued that the FIR clearly narrates the incidents. Whether her statements are consistent or not is a matter for trial. At this stage, considering her age, the detailed narration by a minor cannot be ignored. They submitted that filing of another FIR is no ground to doubt the statement of the minor victim. They prayed for rejection of the bail application.

6. I have considered the submissions of the learned advocates for the applicants, the learned APP, and the advocate for the victim. I have also gone through the material placed on record, including the FIR, statements under Sections 161 and 164 of Cr.P.C., and other documents.

7. The allegations in the FIR state that applicant No.1 committed forcible intercourse with the victim between 1 May 2024 and 5 May 2024. However, in her statement under Section 164 of Cr.P.C., these allegations are not repeated. There are also material inconsistencies in respect of the allegations against applicant No.2 and applicant No.3, when one compares the FIR

and the statement under Section 164 of Cr.P.C. The inconsistencies are significant and will have to be tested at the stage of trial. The applicants have been arrested on 17 May 2024. Investigation is already completed and charge-sheet has been filed. Thus, the custodial interrogation of the applicants is no longer required.

8. It is true that the victim is stated to be a minor and her version cannot be brushed aside lightly. However, whether her statements are consistent and whether the incidents occurred in the manner alleged are matters of trial. At this stage, continued incarceration of the applicants is not necessary. The applicants have no criminal antecedents. The trial is likely to take considerable time. Adequate conditions can be imposed to ensure that the applicants do not tamper with the prosecution evidence or influence the witnesses. In view of the above circumstances, I am of the opinion that the applicants deserve to be released on bail.

9. In view of the above discussion and legal position, the following order is passed:

(a) The Bail Application is allowed.

(b) The applicants shall be released on bail in connection with Crime Register No. 48 of 2024 registered with Mahsala Police Station for offences punishable under Sections 363, 366A, 354, 376, 468, 471, 323, 504 & 34 of IPC, Sections 4, 6, 8 & 12 of POCSO Act and Sections 9, 10, 11 & 12 of the Child Marriage Prohibition Act, upon furnishing a Personal Bond of ₹25,000/- (Rupees Twenty-Five Thousand only) each, 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 applicants shall not tamper with evidence, or directly or indirectly contact, influence, threaten, or intimidate any witness.

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

(d) The applicants shall report to the Mahsala Police Station, once in every three months between 10.00 a.m. and 12.00 noon, until further orders.

(e) The applicants shall, at the time of furnishing surety, provide their 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.

10. The Bail Application is accordingly disposed of in above terms.

(AMIT BORKAR, J.)