

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.5168 OF 2024

Krishnakumar Bholanath Gupta ... Applicant
V/s.
The State of Maharashtra & Anr. ... Respondents

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Mr. Deppak Gautam with Ms. Nandini Vasaikar & Mr. Vikram for the applicant.

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

Ms. Aneesa Cheema for respondent No.2-victim (appointed as Legal Aid).

CORAM : AMIT BORKAR, J.

DATED : AUGUST 1, 2025

PC.:

1. The present application is filed by the applicant under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 ("BNSS" for short), seeking regular bail in connection with Crime Register No.518 of 2024 registered with Nirmal Nagar Police Station, Mumbai. The applicant has been booked for offences punishable under Sections 64, 74 and 351(2) of the Bhartiya Nyaya Sanhita, 2023 ("BNS" for short).

2. As per the prosecution case, the first informant and the applicant were acquainted with each other, as the applicant used to operate a fruit stall in front of Hotel Prasad, which is situated

near the informant's residence. Owing to this regular interaction, a friendship developed between them which gradually turned into a romantic relationship.

3. It is alleged that on 27th August 2024, around 1:30 p.m., the applicant called the informant and asked her to meet him at Sai Baba Road, Khar (East). Upon meeting, the applicant proposed to her and called an auto rickshaw. Both of them boarded the said rickshaw. It is the case of the prosecution that during the rickshaw ride, the applicant allegedly touched the informant inappropriately.

4. Thereafter, the applicant allegedly took the informant to a lodge situated near Santacruz (West) Railway Station, where, as per the version of the informant, he forcibly established physical relations with her, without her consent. Subsequently, it came to the knowledge of the informant that the applicant was already married and had four children, a fact which he had intentionally suppressed from her. It is further alleged that the applicant threatened the informant of dire consequences if she disclosed the incident to anyone, including the police.

5. The informant, after the incident, narrated the said facts to her cousin sister, upon which the matter was reported to the police and the present FIR came to be lodged.

6. Mr. Deppak Gautam, learned Advocate appearing for the applicant submitted that the applicant has been falsely implicated in the present case. He contended that the allegations levelled by the first informant are not only exaggerated but are contrary to the material collected during investigation.

7. It is submitted that the first informant is a major and mature woman, who was well acquainted with the applicant prior to the incident, and was fully capable of taking an informed and independent decision regarding her relationship. It is further argued that the physical intimacy, which allegedly took place on 27th August 2024, was entirely consensual in nature, and there was no element of force or coercion involved.

8. Learned counsel for the applicant further placed reliance upon the CCTV footage of the hotel premises, which, according to him, clearly reveals that the conduct and demeanour of the informant did not suggest that she was subjected to any pressure, threat or physical compulsion. It is submitted that the manner in which the informant voluntarily entered the lodge and was seen interacting with the applicant disproves the allegations of forceful sexual act.

9. The learned counsel has also placed reliance on the authoritative text “Modi’s Medical Jurisprudence and Toxicology”, and particularly drawn attention to the classification of persons with borderline intellectual functioning. It is submitted that, as per the said text, a person having an Intelligence Quotient (IQ) between 50 to 75 is categorized as a person suffering from ‘feeble-mindedness’. While such a person may not be considered legally imbecile, the book suggests that such persons may require supervision and care for their own safety or the safety of others.

10. However, learned counsel clarified that in the present case, there is no such material on record to indicate that the informant

suffered from any such mental incapacity or cognitive impairment which rendered her incapable of giving valid consent. On the contrary, the very case of the prosecution is that the informant was deceived into believing that the applicant was unmarried, which presupposes a level of awareness and decision-making on her part. Hence, the offence under Section 64 of BNS is not attracted, it is argued.

11. Per contra, Mrs. Rajashree V. Newton, the learned Additional Public Prosecutor strongly opposed the bail application. It was submitted that the allegations against the applicant are of a serious and grave nature, involving violation of bodily autonomy and mental dignity of the victim. It was pointed out that the occurrence of the incident itself is not disputed. The only issue raised by the applicant pertains to the nature of consent, which, according to the prosecution, is a matter to be thoroughly adjudicated during the course of trial.

12. The learned APP submitted that, at this stage, the material available on record, particularly the First Information Report, clearly indicates that the sexual intercourse was without the free will and informed consent of the victim. The informant lodged the FIR promptly, on the next day of the alleged incident, which, it is submitted, lends credibility to her version and reflects absence of delay or afterthought in registration of the crime.

13. Additionally, Ms. Aneesa Cheema, learned Advocate appointed to represent the victim, also opposed the bail application. She placed reliance on clinical and psychological

literature pertaining to intellectual disabilities and developmental delays. Referring to standard classification, she submitted that an Intelligence Quotient (IQ) ranging from 50 to 70 is generally considered as “mild mental retardation”. She argued that persons with such intellectual limitations may not fully understand the nature and consequences of a sexual act, and may lack the maturity or cognitive ability to give meaningful and informed consent.

14. Ms. Cheema specifically relied upon the judgment of the Supreme Court in *Chaman Lal v. State of Himachal Pradesh*, (2020) 17 SCC 69. In that case, the victim was found to have an IQ of 62, and despite the argument that she could carry out routine household activities, the Apex Court upheld the conviction. It was observed that the victim, owing to mild mental retardation, was incapable of comprehending the good and bad aspects of sexual behaviour. The Court clarified that minor inconsistencies in her testimony could not be a ground to discard her version, especially when her mental condition restricted her capacity to resist or report the assault immediately.

15. Further, learned Advocate Ms. Cheema placed strong reliance on the judgment of the Supreme Court in *Eera v. State (Govt. of NCT of Delhi)*, (2017) 15 SCC 133, to highlight the important distinction between mental illness and mental retardation. In that case, while interpreting the Protection of Children from Sexual Offences (POCSO) Act, the Court held that even though a person may have attained the age of majority biologically, their “mental age” must also be considered for the purpose of assessing

vulnerability and capacity to consent. The Court discussed how IQ and mental age relate more to academic and cognitive ability, but do not necessarily reflect emotional or social maturity to engage in relationships involving trust, risk, or exploitation.

16. Ms. Cheema argued that in the present case, the informant is stated to have an IQ of around 54, which clearly brings her within the zone of mild to moderate mental retardation. In such a situation, her ability to give voluntary and conscious consent must be viewed in light of her mental limitations. Therefore, according to her, the sexual act in question cannot be presumed to be consensual merely on the basis of external behaviour such as travelling with the applicant or entering the hotel. She therefore urged that the applicant does not deserve the discretionary relief of regular bail at this stage, as releasing him may cause further trauma to the victim and may also affect the course of trial.

17. I have considered the rival submissions advanced by the learned Advocate for the applicant, the learned Additional Public Prosecutor for the State, as well as the learned Advocate appointed to represent the victim. I have also perused the case papers made available for my perusal.

18. At the outset, it is to be noted that the allegations made in the FIR are serious in nature. The offence registered against the applicant includes Section 64 of the BNS, carries a grave impact not only on the physical but also on the mental well-being of the victim.

19. As far as the preliminary contention of the applicant regarding consensual nature of the relationship is concerned, it must be borne in mind that consent, particularly in sexual offences, is not merely a matter of physical submission. It must be an act of reason accompanied by deliberation. The issue whether the act was consensual or not is indeed a matter for trial. However, at the stage of bail, this Court is required to form a prima facie view from the available materials.

20. In the present case, the FIR was lodged by the victim on the very next day of the alleged incident, which indicates promptness and rules out possibility of afterthought. Moreover, the informant has specifically alleged that she was deceived by the applicant, who proposed to her while suppressing the fact that he was already married and had four children. Such concealment, if proved, may vitiate the very foundation of any alleged consent. In such circumstances, the claim of consensual intercourse becomes a disputed fact and cannot be accepted at face value at this stage.

21. The applicant has relied upon the CCTV footage of the hotel to support his defence that the informant was not under duress. However, mere outward conduct or behaviour as captured on video may not reflect the inner emotional state or the mental capacity of the individual, particularly when the allegations relate to a victim suffering from cognitive limitations.

22. In this context, this Court cannot ignore the submissions of the learned Advocate for the victim. The case records indicate that the victim has a recorded IQ score of 54, which, as per standard

medical and psychiatric classifications, falls under the category of mild mental retardation. It is well settled that persons suffering from such intellectual deficiencies may not possess the ability to understand the consequences of their actions or give informed and voluntary consent.

23. The Supreme Court, in *Chaman Lal (supra)*, has categorically held that when the victim is suffering from mild mental retardation, her testimony cannot be discarded merely on the ground of some inconsistencies, as she may not be in a position to narrate the sequence of events in a logical or chronological manner. What matters is whether her overall evidence inspires confidence and is corroborated by medical or circumstantial evidence.

24. In *Eera (supra)*, the Apex Court further explained that mental age and IQ can be relevant for assessing whether the victim had the capacity to give informed consent, even if she had attained majority in biological terms. The ratio of that judgment supports the view that in cases involving persons with mental retardation or developmental delay, their vulnerability must be treated on par with minors for the purposes of determining consent.

25. Applying the principles laid down in the above decisions, and considering the low IQ of the informant, this Court finds merit in the submission that even if the victim appeared to cooperate with the applicant, her mental condition may not have allowed her to understand the nature and implications of her actions. Her consent, if any, cannot be said to be voluntary and informed in the

eyes of law. Thus, the prima facie case of the prosecution is supported by medical and psychological aspects.

26. One more aspect which weighs against the applicant and disentitles him from being released on regular bail at this stage is the observation made by the learned Sessions Judge in his order, wherein it has been noted that the victim has filed an affidavit stating that she has no objection to the grant of bail to the applicant. While on the face of it, such an affidavit may appear to be in favour of the applicant, this Court is required to examine the surrounding circumstances in which such affidavit has been filed, particularly in light of the mental condition of the victim.

27. In my considered view, the possibility of the applicant having influenced or pressurised the victim, by taking advantage of her intellectual impairment, cannot be ruled out at this stage. The informant is already shown to be a person with limited cognitive functioning, and the very fact that such an affidavit was obtained from her during the pendency of bail proceedings raises a serious apprehension that the applicant may be exerting influence over her, directly or indirectly.

28. In such cases, where the victim is intellectually vulnerable and may not fully understand the legal implications of her statements or affidavits, the Court is duty-bound to adopt a cautious and protective approach. Allowing the applicant to be released on bail at this juncture may result in further manipulation of the victim, and may deter her from deposing truthfully during the course of trial.

29. Therefore, in the interest of justice, it would not be proper to enlarge the applicant on bail until the evidence of the victim is recorded and completed before the trial Court. Protecting the integrity of the testimony of such a vulnerable witness is of paramount importance in ensuring a fair trial.

30. In view of the detailed discussion above, this Court finds that the allegations against the applicant are of a serious nature and supported by prima facie material. The mental condition of the victim, as reflected from the medical record, indicates that she suffers from mild mental retardation, and is likely to be vulnerable to influence and manipulation.

31. The claim of consensual relationship, at this stage, cannot be accepted on the face of it, particularly when the prosecution case is supported by the victim's immediate complaint, medical evidence, and her cognitive condition. The possibility of the applicant having taken advantage of her mental condition, including the filing of a no-objection affidavit, also raises a serious concern about influence and interference with the course of justice.

32. This Court is, therefore, of the considered opinion that releasing the applicant on bail at this stage may pose a risk of witness tampering and may prejudice the trial, especially since the deposition of the victim is yet to take place.

33. Hence, the present bail application stands rejected.

34. The learned Trial Court is requested to expedite the recording of the evidence of the victim.

35. However, it is made clear that the applicant shall be at liberty to renew his prayer for bail after recording of evidence of the victim, or in the event there is no substantial progress in the trial within one year. Such application, if filed, shall be considered on its own merits and in accordance with law.

(AMIT BORKAR, J.)