

Shabnoor

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

BAIL APPLICATION NO. 5209 OF 2024

Vijay Sarvanan Nair

... Applicant

V/s.

State of Maharashtra & Anr.

... Respondents

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Mr. Ramesh K. Yadav for the Applicant.

Mrs. Megha S. Bajoria, APP for State – respondent
No.1.

Laxmi Devenr, Victim is present in the Court.

Mr. Sanjay Pwar, PSI, Gorai Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 6, 2025

PC.:

1. This is an application filed under Section 439 of the Code of Criminal Procedure, 1973. The applicant seeks bail in connection with POCSO Special Case No. 483 of 2024 registered at Gorai Police Station, Mumbai. The case involves charges under Sections 354-C, 366, 376(2)(n), 504 and 506 of the Indian Penal Code, 1860, Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), and Section 67 of the Information and Technology Act.

2. The prosecution case is as follows. On 1st January 2022, being the accused's birthday, he took the victim to Gorai beach. After some time there, he told her they would go to a lodge. The

victim refused, but the accused forced her to go with him to Blue Star Hotel in Village Shefali at Gorai. At the hotel, the accused used an Aadhaar card of one Rama which he had saved on his mobile phone. This was done as the victim was 16 years and 4 months old at that time. After booking the room, the applicant consumed liquor and approached the victim. When she opposed him, he promised to marry her despite her resistance. The applicant then forcibly removed the victim's clothes and had sexual intercourse with her against her will. Even thereafter, the accused took the victim to Gorai and from there to another hotel room where he again had relations with her. In July 2022, the accused began pressuring the victim to come with him to his village Salem in Tamil Nadu, saying they would marry before their families. On 27th/28th July 2022, the victim went with the accused by train to his village. Subsequently, the present case was registered against the applicant.

3. The learned counsel for the applicant submits that on the date of the first incident, the victim was 17 years old. He contends that the relationship between the applicant and victim was with consent. As per the victim's own statement, she knew that the applicant was already married. The FIR was filed on 19th June 2024. He further submits that in her statement under Section 164 Cr.P.C., the victim stated that they were living as husband and wife. The applicant has now married the victim. The applicant was arrested on 2nd August 2024. He therefore prays for grant of bail to the applicant.

4. The learned Additional Public Prosecutor opposes the bail application. She states that the victim is present in Court. She submits that the alleged offence is of serious nature. The record shows that all elements of the alleged offence are made out. She therefore opposes the bail application.

5. The victim is present in Court and has been identified by the Investigating Officer. She further states that the applicant has married the victim in an informal ceremony. This was done in presence of the applicant's mother and brother at his native place. Therefore, she has no objection to the release of the applicant on bail.

6. I have carefully considered the submissions made by both sides and have perused the material on record. The following circumstances weigh in favour of granting bail to the applicant:

7. The learned counsel for the applicant has submitted that the victim was 17 years old at the time of the first incident on 1st January 2022. If this submission is correct, then the provisions of the POCSO Act may not be attracted as the victim would not fall within the definition of a "child" under Section 2(d) of the POCSO Act, which defines a child as any person below the age of eighteen years. However, this is a matter to be determined during trial.

8. The victim's own statement under Section 164 Cr.P.C. indicates that they were living together as husband and wife. This suggests that the relationship may have been consensual in nature. The victim was aware that the applicant was already married, yet continued the relationship.

9. A significant factor is that the applicant has now married the victim in an informal ceremony in the presence of his family members at his native place. This marriage, though informal, indicates the genuine intention of the applicant to accept the victim as his wife.

10. Most importantly, the victim is present in Court and has been identified by the Investigating Officer. The victim herself has no objection to the release of the applicant on bail. The consent of the victim, who is the complainant in this case, is a crucial factor to be considered.

11. There is a considerable delay in filing the FIR. The alleged incidents occurred in January 2022 and July 2022, but the FIR was registered only on 19th June 2024. This delay of approximately two years raises questions about the genuineness of the complaint and suggests that the relationship continued consensually for a substantial period.

12. The investigation appears to be substantially complete. The victim is not only aware of the bail application but is present in Court and has consented to the same. There is no likelihood that the applicant will tamper with evidence or influence the victim.

13. The applicant has married the victim and appears to have settled down. There is no indication that he will abscond or evade trial.

14. It is well settled that bail is the rule and jail is the exception. The applicant has been in custody since 2nd August 2024. Considering the nature of the case and the circumstances discussed

above, continued detention is not warranted.

15. Taking into consideration the totality of circumstances, particularly the victim's consent to bail, the subsequent marriage between the parties, the consensual nature of the relationship as evidenced by the victim's own statement, and the substantial delay in filing the complaint, I am satisfied that this is a fit case for granting bail to the applicant.

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

(i) The Bail Application stands allowed.

(ii) The applicant shall be released on cash bail of ₹25,000/- (Rupees Twenty-Five Thousand only) in connection with POCSO Special Case No. 483 of 2024 registered with Gorai Police Station, Mumbai, for offences punishable under Sections 354-C, 366, 376(2)(n), 504 and 506 of IPC, Sections 4, 8 and 12 of the POCSO Act.

(a) Within a period of eight weeks from the date of his release, the applicant shall furnish a Personal Bond of ₹25,000/- (Rupees Twenty-Five Thousand only) with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court.

(b) The applicant shall not directly or indirectly make any contact with the family members of the victim or any prosecution witnesses.

(c) The applicant shall report to the concerned police

station once in every three months (i.e., on the 1st day of the month) between 10:00 a.m. and 12:00 noon, until further orders.

(d) The applicant shall furnish his current residential address and mobile number to the Investigating Officer, and shall inform the Investigating Officer of any change in address or contact details forthwith.

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

17. The Bail Application stands disposed of in above terms.

(AMIT BORKAR, J.)