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

**BAIL APPLICATION NO.5320 OF 2024**

|                                 |                 |
|---------------------------------|-----------------|
| Kumar Sunil Vijaylal Prajapati  | ... Applicant   |
| <b>V/s.</b>                     |                 |
| The State of Maharashtra & Anr. | ... Respondents |

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Mr. Mohd. Kasim Alure with Mr. Kalam Shaikh for the applicant.

Mr. Sagar R. Agarkar, APP for respondent No.1-State.

Mr. Viral Mukte for respondent No.2-victim (appointed as Legal Aid).

**CORAM : AMIT BORKAR, J.**

**DATED : AUGUST 13, 2025**

**P.C.:**

1. The present application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 ("Cr.P.C."), seeking his release on regular bail in connection with Crime Register No. 1608 of 2023, registered with Malwani Police Station, Mumbai. The offences alleged against the applicant are punishable under Sections 376(2)(n), 316, and 318 of the Indian Penal Code, 1860 ("IPC").

2. As per the prosecution case, the informant lodged a report on 21 December 2023, alleging that on 25 May 2023, the applicant/accused forcibly committed sexual intercourse with her against her consent on the pretext of marriage. It is alleged that on

several occasions thereafter, about five to six times, the applicant again committed sexual intercourse without her consent. The narration further discloses that the physical relationship between the applicant and the victim resulted in pregnancy, which was terminated on 18 December 2023. Based on the report, the present offence came to be registered.

3. Learned Advocate appearing for the applicant submitted that the materials on record, including the narration of events by the victim herself, indicate that the applicant and the victim were in a consensual relationship. It is urged that there is no material to suggest that force was used by the applicant. The version of the victim shows that both were in a relationship for some time and had physical intimacy on multiple occasions. The victim was 20 years of age and the applicant was 22 years at the relevant time. It is submitted that the complaint was lodged only on 21 December 2023, three days after the abortion, and nearly seven months after the alleged first incident. The applicant has no past criminal record and has roots in society. On these grounds, the learned Advocate prayed that the applicant be released on bail.

4. On the other hand, the learned APP, supported by the learned Advocate appointed to represent the victim, opposed the bail application. It is submitted that the applicant obtained the victim's consent for physical relations on the false promise of marriage, and such consent, being vitiated, does not amount to "consent" in law. It is further urged that the repeated acts alleged, taken with the fact that pregnancy occurred and was later terminated, prima facie attract the provisions of Section 376(2)(n)

of the IPC, along with the other offences registered. In view of the seriousness of the allegations and the nature of the evidence, it is prayed that the application be rejected.

5. I have considered the submissions of both sides and perused the material available on record. The FIR discloses that the first alleged incident occurred on 25 May 2023, whereas the report was lodged only on 21 December 2023. The delay of nearly seven months in lodging the FIR, though not always fatal in cases of sexual assault, is a relevant factor in assessing the prima facie case, particularly when both the applicant and victim were majors and admittedly in contact over an extended period.

6. The statement of the victim, taken as it stands, indicates that the applicant and victim were in a relationship for some time. The allegations suggest repeated sexual relations, which, according to the victim, were on the pretext of marriage. At this stage, without entering into the deeper merits, it is prima facie clear that there was no element of physical force or coercion alleged in each incident beyond the aspect of alleged false promise. Whether the alleged promise of marriage was false from the inception or whether the relationship was consensual in the factual circumstances is a matter of trial and cannot be conclusively determined at this stage.

7. It is also to be noted that both the applicant and the victim were young adults, the victim being 20 years old and the applicant 22 years old at the relevant time. The applicant has no criminal antecedents. The investigation appears to be substantially

complete, and the charge-sheet is likely to be filed, thereby reducing the possibility of tampering with evidence. The apprehension of the prosecution regarding influencing the victim can be addressed by imposing strict conditions.

8. In view of the above discussion, and taking into account the long delay in lodging the FIR, the consensual nature of the relationship as prima facie appearing from the record, the age and background of the parties, and the absence of criminal antecedents, I am of the view that the applicant has made out a case for release on bail. The apprehensions of the prosecution can be safeguarded by imposing suitable conditions.

9. Hence, following order is passed:

- i) The bail application is allowed;
- ii) The applicant is directed to be released on regular bail in connection with Crime Register No.1608 of 2023 registered with Malwani Police Station, Mumbai for offences punishable under Sections 376(2)(n), 316, and 318 of the IPC, upon furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or more solvent sureties in the like amount, to the satisfaction of the Trial Court, subject to the following conditions:
  - (a) The applicant shall not tamper with evidence, or directly or indirectly contact, influence, threaten, or intimidate any witness, particularly family members of the deceased.

(b) The applicant shall report to the Malwani Police Station, Mumbai once in three months, specifically on the 1st Monday, between 10:00 a.m. and 12:00 noon, until further orders.

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

(d) The applicant shall, at the time of furnishing surety, provide his 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.

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

**10.** The bail application is allowed and disposed of.

**(AMIT BORKAR, J.)**