

Shabnoor

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

BAIL APPLICATION NO.125 OF 2025

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Danish Hanif Shaikh
V/s.
State of Maharashtra

... Applicant

... Respondent

Ms. Sakshi S. Mane, for the applicant.

Ms. Kavishe Khanna for respondent No.2 (Appointed as Legal-Aid counsel).

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

Mr. Santosh Chavan, API, Shil Daighar Police Station.

CORAM : AMIT BORKAR, J.

DATED : JULY 22, 2025

P.C.:

1. The present application for bail has been filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973. The applicant seeks his release in connection with Crime Register No. 408 of 2023 registered with Shil Daighar Police Station. He has been booked for offences punishable under Sections 376(2)(n), 328, and 506 of the Indian Penal Code, 1860. In addition, Section 67 of the Information Technology Act, 2000 has also been invoked against him, which deals with the publication and transmission of obscene material in electronic form.

2. As per the case of the prosecution, the complainant states that she had been residing in Thane with her friend Darshana

Jadhav for about a month. She had completed her education up to Class 12 in Madhya Pradesh and had come to Thane in search of employment. She was working on an online platform called 'Chamet'. After moving to Thane, she started staying with one Diksha Patel, who introduced her to the applicant, Danish Shaikh. The complainant alleges that Danish told her that Diksha was involved in drug consumption and was not a good influence. Danish then assisted the complainant in finding a new rental room in Mumbra, owned by one Rehman Shaikh. It is alleged that Danish used to frequently visit her at the said premises for casual conversations. On 28th July 2023, the complainant informed Danish that she was feeling unwell and requested him to bring medicines. Around 7:30 p.m., Danish came to her residence and gave her some medicine, after which she fell unconscious.

3. It is further the case of the prosecution that while the complainant was unconscious, the applicant committed sexual assault on her. After regaining consciousness, when she questioned him, the applicant allegedly confessed that he had administered sedative tablets to her and had sexual intercourse with her, assuring her that they would get married soon. The complainant has further stated that on subsequent occasions also, the applicant came to her house and forced her to engage in sexual intercourse with him under the same false assurance of marriage. Based on these allegations, the present FIR came to be registered. The applicant had earlier approached the learned Sessions Court for bail, which came to be rejected. Aggrieved by the said order, the applicant has now moved this Court seeking bail.

4. Learned Advocate appearing for the applicant has invited this Court's attention to the victim's statement recorded under Section 164 of the CrPC, and other supporting material placed on record. It is argued that there are material inconsistencies in the version given by the victim, including in her Section 164 statement, which cast a serious doubt on the truthfulness of the allegations. It is further submitted that the FIR itself reveals that there was an existing relationship between the applicant and the victim, which serves as the background for the present incident. The defence has also emphasized the delay in registration of the FIR, which was lodged on 28th September 2023, and has pointed out that the reason for such delay has been attributed to two grounds: (i) the applicant's alleged promise of marriage and (ii) threats of making certain obscene photographs viral. The applicant's counsel has further pointed out that the complainant has, in her own version, mentioned an incident of sexual intercourse as late as 17th September 2023, again on a promise of marriage. The complainant also referred to a third incident in her statement dated 20th July 2023. Thus, it is submitted that between 20th July 2023 and 17th September 2023, there were repeated acts of sexual intercourse, which, according to the applicant's counsel, suggest that the relationship was consensual. It is also submitted that the complainant is aged 21 years and the applicant is 20 years old. On this basis, it is prayed that the applicant deserves to be released on bail.

5. Per contra, the learned Additional Public Prosecutor and the learned counsel appointed to represent the victim have strongly

opposed the grant of bail. It is submitted that the delay in lodging the complaint is not unnatural and stands explained, as the victim was allegedly threatened with the circulation of her obscene photographs and was misled by a false assurance of marriage. It is further submitted that the repeated sexual acts were not consensual but were induced by coercion, deceit, and threats, and hence, attract the ingredients of the offence under Section 376(2) (n) of the IPC. The prosecution has also brought to the Court's notice that during the pendency of the bail proceedings before the learned Sessions Court, the applicant attempted to influence the victim by offering her a bribe of ₹3 lakhs. This act of attempting to tamper with the prosecution witness, it is argued, is a serious ground for rejecting bail. There is a strong apprehension that if the applicant is released on bail, he may again attempt to interfere with the investigation or influence the witnesses. In such circumstances, it is submitted that the applicant does not deserve the discretionary relief of bail.

6. I have carefully considered the rival submissions of the learned counsel for the applicant, the learned APP for the State, and the learned advocate appointed to represent the victim. I have also perused the material placed on record, including the FIR, the statement of the victim under Section 164 of the CrPC, and other relevant documents.

7. At the outset, it is to be noted that the victim is a major and is aged 21 years, whereas the applicant is stated to be 20 years old. The FIR as well as the Section 164 statement disclose that the applicant and the victim were acquainted through a common

friend and had developed a personal relationship over a period of time. The allegations as narrated in the complaint and the subsequent statements suggest that there were repeated sexual encounters between the parties from 20th July 2023 to 17th September 2023. The complainant has referred to multiple such instances, and in all of them, she has attributed the element of consent to a false promise of marriage.

8. In the facts of the present case, the FIR came to be registered on 28th September 2023, nearly two months after the alleged first incident. The reason for delay, as stated by the victim, is two-fold — a promise of marriage and threats to circulate objectionable photographs. While the explanation for delay cannot be brushed aside at the stage of bail, the entire set of allegations are to be seen from a *prima facie* perspective. The relationship between the applicant and the victim, as disclosed in the statements, appears to be of a personal and intimate nature, sustained over a span of weeks.

9. It is settled law that whether consent obtained on the pretext of marriage amounts to "no consent" is a matter that requires appreciation of evidence during trial. At the stage of bail, the Court is required to form a *prima facie* view as to whether the applicant's custodial interrogation is necessary and whether the applicant is likely to tamper with evidence or influence the prosecution witnesses if released on bail.

10. As regards the allegation that the applicant tried to offer ₹3 lakhs to the victim during the pendency of the bail application

before the Sessions Court, no independent or reliable material has been placed on record to establish the said allegation. In any case, appropriate conditions can be imposed to prevent any attempt by the applicant to contact or influence the victim.

11. The investigation in the present case appears to be substantially completed. The applicant has been in custody since his arrest and no serious apprehension has been made out by the prosecution to indicate that he may flee from justice or tamper with evidence. The offences alleged are serious in nature, but the same will be tested at the stage of trial based on the evidence adduced. At this stage, continued custody of the applicant is not warranted.

12. Considering the totality of facts and circumstances, including the nature of allegations, the age of the parties, the previous acquaintance between them, the delay in lodging FIR, and the material on record, I am of the opinion that the applicant deserves to be released on bail with appropriate conditions to ensure that he does not misuse the liberty.

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

- (i) The Bail Application is allowed.
- (ii) The applicant, shall be released on bail in connection with Crime Register No. 408 of 2023 registered with Shil Daighar Police Station for offences punishable under Sections 376(2)(n), 328, 506 of IPC, and under Section 67 Information Technology Act, upon furnishing a Personal

Bond of ₹25,000/- (Rupees Twenty-Five Thousand only) along with one or more solvent sureties in the like amount, to the satisfaction of the learned 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.
- (b) The applicant shall report to the Shil Daighar Police Station on the first Monday of every month between 10.00 a.m. and 12.00 noon, until further orders.
- (c) The applicant shall not, in any manner, contact the victim or her family members, directly or indirectly.
- (d) The applicant shall not leave the territorial jurisdiction of the Trial Court without its prior written permission.
- (e) The applicant shall not commit any offence or engage in any criminal activity during the pendency of the trial.
- (f) 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.

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

(AMIT BORKAR, J.)