

Ashish

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

BAIL APPLICATION NO. 384 OF 2025

Vinod Madhukar Nade	... Applicant
V/s.	
State of Maharashtra and anr	... Respondents

Mr. Rafiq Gori a/w Mr. Affin Pathan, Mr. Tohid Shaikh
i/b Mr. Sharin Pathan, for Applicant.

Ms. Gayatri Pinkyar, for Respondent No.2 (Appointed
as Legal Aid).

Mr. Sagar Agarkar, APP for Respondent No.1- State.

Mr. Gopinath Kendre, PSI, Malvani Police Station.

CORAM : AMIT BORKAR, J.

DATED : JULY 9, 2025

P.C.:

1. This is a bail application filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail in connection with Crime Register No. 1279 of 2023, registered at Malvani Police Station. The applicant is facing prosecution for serious offences punishable under Sections 363 (kidnapping), 354 (assault or criminal force to woman with intent to outrage her modesty), 376 (rape), and 376 (2) (n) (rape on woman under sixteen years of age) of the Indian Penal Code, 1860, read with Sections 4 (punishment for penetrative sexual assault), 6 (punishment for aggravated penetrative sexual assault), and 8 (punishment for sexual assault) of the Protection of Children from

Sexual Offences Act, 2012.

2. The case of the prosecution, as per the First Information Report and the investigation conducted, is that the informant lodged a complaint with Malvani Police Station alleging that the informant is the mother of the victim. The victim is a minor girl aged 17 years and 9 months at the time of the incident. On 01.09.2023, the victim left her parental house and went away without informing anyone about her whereabouts. Being concerned about her daughter's safety and well-being, the informant approached the police and lodged a complaint of kidnapping under the relevant provisions of law. Subsequently, the victim was traced and brought to the police station for recording her statement. During the course of interrogation, the victim disclosed that she had missed her regular menstruation cycle and upon examination, it was discovered that she was pregnant. The victim further stated that she was frightened and scared about her condition and therefore, did not disclose the incident to anybody including her parents. This fear and anxiety led her to leave the house and go away from her family. The victim, in her statement to the police, categorically stated that the accused person had committed forcible sexual intercourse with her against her will and consent, which resulted in her pregnancy. The victim's statement formed the basis of the criminal case, and on the strength of this information, the crime came to be registered under Section 376(2) (j) of the Indian Penal Code read with Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012.

3. The learned Advocate representing the applicant has made several submissions in support of the bail application. The primary contention raised is regarding the delay in lodging the First Information Report. According to the counsel, as per the statement of the victim herself, the alleged incident occurred in the first week of September 2023, whereas the First Information Report was lodged much later on 2nd October 2023, which was only when the victim was detected to be pregnant. The counsel has argued that this delay of approximately one month in reporting the incident raises serious doubts about the veracity and credibility of the prosecution case. He has submitted that such delay in reporting cases of sexual assault, without any reasonable explanation, affects the reliability of the victim's statement and creates doubt in the prosecution's version of events. Furthermore, the defence counsel has drawn the attention of this Court to the fact that the DNA report, which is a crucial piece of evidence in cases of sexual assault, is inconclusive. He has argued that in the absence of conclusive DNA evidence, it cannot be ascertained with certainty that the applicant was responsible for the pregnancy of the victim. The inconclusive nature of the DNA report creates reasonable doubt about the involvement of the applicant in the alleged crime.

4. The counsel has also highlighted that the applicant was arrested on 2nd October 2023, and despite the passage of considerable time, the charges are yet to be framed against him. He has submitted that the trial proceedings are moving at a slow pace, and it is unlikely that the trial will be conclusively completed within a reasonable period. Therefore, keeping the applicant in

custody for an indefinite period would amount to violation of his fundamental right to life and liberty under Article 21 of the Constitution of India.

5. Per contra, the learned Additional Public Prosecutor representing the State and the Advocate appointed to represent the victim have vehemently opposed the bail application. They have contended that the offence alleged against the applicant is extremely serious in nature and falls under the category of heinous crimes against women and children. The prosecution has argued that the statement of the victim, along with the corroborative statements of her parents, are consistent and reliable. They have submitted that the victim's statement clearly shows the active role and involvement of the applicant in committing the alleged offence. The prosecution has emphasized that the victim, being a minor, is a vulnerable person, and her statement carries significant weight in the eyes of law. The prosecution has further contended that the delay in lodging the FIR can be explained by the fact that the victim was in a state of shock and trauma after the incident, and being a minor, she was scared to disclose the matter to anyone. It is only when her pregnancy was detected that the truth came to light, and the complaint was immediately lodged thereafter. Regarding the DNA report being inconclusive, the prosecution has argued that this alone cannot be the ground for granting bail, as there are other pieces of evidence including the victim's statement, medical evidence of pregnancy, and the circumstances of the case which collectively point towards the guilt of the applicant. The prosecution has therefore submitted that

considering the serious nature of the offence, the age of the victim, and the evidence on record, the bail application deserves to be rejected, and the applicant should be kept in custody until the trial is completed.

6. After carefully considering the submissions made by both the learned counsels and examining the material on record, this Court is of the considered opinion that the applicant is entitled to be released on bail on the following grounds: The most significant factor that weighs in favor of the applicant is the unexplained delay of approximately one month in lodging the First Information Report. According to the victim's own statement, the alleged incident occurred in the first week of September 2023, but the FIR was registered only on 2nd October 2023. While it is true that victims of sexual assault may sometimes delay in reporting due to trauma and social stigma, the delay in the present case appears to be substantial and raises questions about the immediate reaction of the victim to the alleged incident.

7. The DNA report, which is considered to be one of the most reliable pieces of scientific evidence in cases of sexual assault, has turned out to be inconclusive. This is a significant development that cannot be overlooked. The prosecution's case heavily relies on establishing the paternity of the unborn child to prove the guilt of the applicant. However, with the DNA report being inconclusive, the prosecution has failed to establish the direct link between the applicant and the alleged crime through scientific evidence.

8. The applicant has been in custody since 2nd October 2023, which is a considerable period. The fundamental principle of criminal jurisprudence is that an accused person is presumed to be innocent until proven guilty. The right to liberty is a fundamental right guaranteed under Article 21 of the Constitution of India, and it can be curtailed only in exceptional circumstances.

9. The charges against the applicant are yet to be framed, and considering the workload of the courts, it is unlikely that the trial will be completed within a reasonable time. The Court notes that the applicant can be released on bail with appropriate conditions that would ensure that he does not tamper with evidence, influence witnesses, or abscond from the trial. The imposition of stringent bail conditions can adequately address the concerns raised by the prosecution regarding the safety of the victim and the integrity of the investigation.

10. Considering the totality of circumstances, the delay in filing the FIR, the inconclusive DNA report, the prolonged custody of the applicant, and the principle that bail is the rule and jail is the exception, this Court is of the considered view that the applicant has made out a case for grant of bail. However, considering the serious nature of the allegations and the need to ensure that the trial proceeds smoothly, the bail shall be granted subject to stringent conditions to safeguard the interests of justice and the victim. Hence the applicant is entitled to be released on bail.

ORDER

- (a) The application is allowed.
- (b) The applicant is directed to be released on bail in connection with C.R. No. 1279 of 2023 registered with Malwani Police Station, for offences punishable under Sections 363, 354, 376, 376(2)(N) of the IPC, r/w Section 4, 6, 8, POCSO, on his executing P.R. Bond of ₹25,000/- (Rupees Twenty-Five Thousand Only) with one or more sureties in the like amount.
- (c) The applicant shall not tamper with the evidence or attempt to influence any witness.
- (d) The applicant shall report to the Investigating Officer once in three months on first Monday between 10 am to 12 am.
- (e) The applicant shall furnish his current residential address and contact number to the Investigating Officer and shall not change the same without prior intimation to the Court.
- (f) The applicant shall not contact with the victim or her family members.

(AMIT BORKAR, J.)