

AGK

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

BAIL APPLICATION NO.640 OF 2025

Janak Ramsingh Olee ... Applicant
V/s.
 The State of Maharashtra & Anr. ... Respondents

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Mr. Dhiraj Panchange i/by Mr. Santosh Sonawane for the applicant.

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

Mr. Sachin Bhavar for respondent No.2-victim.

Mr. Manish Waghmare, PSI, Ambernath Police Station, is present.

Smt. Khairumannisa Hanif Khan, respondent No.2-complainant, is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 17, 2025

P.C.:

1. The present application is filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "BNSS") seeking regular bail by the applicant in connection with Crime Register No.1352 of 2024 registered with Ambernath Police Station. The offences alleged are punishable under Sections 64(1), 64(2)(m), 64(2)(l), 76, 352, 118(1), 115(2), 351(2), 324(2) of the BNSS and also under Sections 37(1) and 135 of the Maharashtra Police Act, 1951.

2. As per the case of the prosecution, the victim, who is a 59-year-old married woman, has lodged a complaint alleging that an unknown person unlawfully entered her residence, assaulted her with fist blows and an iron pipe, forcibly disrobed her, and thereafter repeatedly committed rape upon her. Based on the said allegations, the police registered the FIR and initiated investigation.

3. The applicant was taken into custody on 3rd November 2024. His application for bail came to be rejected by the learned Sessions Court. Aggrieved by the said order, the present application has been filed before this Court seeking regular bail.

4. Learned Advocate appearing for the applicant submits that the FIR has been lodged due to a misunderstanding between the applicant and the victim. It is submitted that the incident of sexual intercourse, if any, was with the consent of the victim. He further submits that the victim has now realized the mistake and has expressed her willingness not to pursue the complaint. The learned Advocate further states that the victim has no objection if the applicant is released on bail and has filed an affidavit to that effect.

5. On the other hand, the learned APP has strongly opposed the bail application. She submits that during the course of investigation, the iron rod and knife allegedly used in the commission of offence were recovered at the instance of the applicant. She submits that the contents of the FIR and the material collected during investigation clearly indicate the

involvement of the applicant in the heinous offence. She argues that such cases involving serious allegations cannot be trivialized or compromised between parties, and that the investigation process ought not to be misused by later withdrawal of support by the victim. She further submits that if the Court is inclined to grant bail, it may consider imposing exemplary costs.

6. Learned Advocate appearing for the victim has also been heard. He states that the victim is present before the Court and has instructed him to convey that she has no objection to the release of the applicant on bail. An affidavit sworn by the victim to that effect is tendered on record. The said affidavit is taken on record and marked as Exhibit 'X' for identification.

7. On going through the material placed on record, it appears that there is no dispute that a sexual encounter did take place between the applicant and the victim. However, whether the said act was with the free will and consent of the victim or whether it was committed by use of force is a matter which can only be determined after appreciation of evidence during trial. This Court, at this stage, is not expected to conduct a mini-trial. The victim, who is present before the Court today, has made a voluntary statement that the FIR was lodged due to a misunderstanding on her part, and she has no objection if the applicant is released on bail.

8. However, the submission advanced by the learned Additional Public Prosecutor deserves careful consideration. The learned APP has pointed out that the victim's allegations are supported by some

material collected during investigation. Therefore, any subsequent statement by the victim expressing no objection may create an impression that the machinery of investigation is being misused or compromised after registration of FIR. This Court finds merit in that apprehension.

9. That being said, the scope of this Court while exercising powers under Section 439 of the Code of Criminal Procedure, 1973 (now *pari materia* with Section 483 of the *Bhartiya Nagarik Suraksha Sanhita*, 2023) is limited to examining whether a *prima facie* case is made out for bail, and whether the accused satisfies the basic conditions such as not being a flight risk, likelihood of tampering with evidence, or repeating the offence.

10. This Court is not exercising jurisdiction akin to a writ petition or inherent powers under Section 482 of the Code to quash proceedings or investigate the veracity of subsequent settlement between the parties. The power to grant bail must remain limited to the judicial parameters of *prima facie* material, gravity of offence, and interest of justice. However, if it is ultimately established that the prosecuting machinery has been misused or manipulated after filing of FIR, then appropriate remedy lies elsewhere, including by way of imposition of costs or seeking redress under inherent powers.

11. Considering the above facts, particularly the statement of the victim that she does not object to the release of the applicant on bail, and keeping in mind that the trial will take its own course, this Court is of the view that the applicant has made out a case for

being released on bail with appropriate conditions to ensure that the trial is not prejudiced.

12. Hence, the following order is passed:

13. The Bail Application is allowed.

14. The applicant is directed to be released on regular bail in connection with Crime Register No.1352 of 2024 registered with Ambernath Police Station for offences punishable under Sections 64(1), 64(2)(m), 64(2)(l), 76, 352, 118(1), 115(2), 351(2), 324(2) of the Bhartiya Nagarik Suraksha Sanhita, 2023 and Sections 37(1) and 135 of the Maharashtra Police Act, 1951, upon: furnishing cash surety of ₹25,000/-, and furnishing personal bond in the like amount within a period of two weeks from the date of his release.

15. The bail shall be subject to the following conditions:

- a) The applicant shall not, in any manner, contact the victim or her family members, directly or indirectly;
- b) The applicant shall cooperate with the Investigating Agency and prosecution and shall attend the dates fixed for hearing of the case before the Trial Court regularly;
- c) The applicant shall not tamper with evidence or attempt to influence any prosecution witness;
- d) The applicant shall provide his current residential address to the Investigating Officer and the Trial Court, and shall immediately notify any change in address;

e) The applicant shall not commit any offence during the pendency of the trial. In case of any such incident, the prosecution shall be at liberty to move an appropriate application for cancellation of bail.

16. The Bail Application stands disposed of in the above terms.
No order as to costs.

(AMIT BORKAR, J.)