

Shabnoor

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

BAIL APPLICATION NO. 738 OF 2025

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Nityanand Mani Devendra	... Applicant
V/s.	
State of Maharashtra & Anr.	... Respondents

Mr. Satish R. Mishra a/w Ms. Divya Ranpise, for the applicant.

Mr. Sagar R. Agarkar, APP for the State – respondent.

Mr. Nitin Palande, PSI, Trombay Police Station.

CORAM : AMIT BORKAR, J.

DATED : JULY 23, 2025

P.C.:

1. The present bail application is filed by the applicant under Section 483 of the Bharatiya Nagrik Suraksha Sanhita, 2023, seeking his release in connection with Crime Register No. 411 of 2023, registered at Trombay Police Station. The applicant stands charged for serious offences under Sections 376, 376(2)(n), 376-D, 328, 506(II), 323, 504, and 114 of the Indian Penal Code, 1860. Additionally, the offence under Section 67-A of the Information Technology Act, 2000 has also been invoked against him.

2. As per the case of the prosecution, the First Information Report (FIR) has been lodged by the complainant, who is none other than the wife of the present applicant. It is stated that the

complainant and the applicant got married in the year 2015, and from their wedlock, two children were born. According to the complainant, in the year 2020, two sons of the applicant from his earlier marriage, namely Mariappa and Vyankatesh, started residing with them in the same household. The complainant has alleged that the applicant is of an erratic and unstable disposition and had developed a habit of watching obscene content regularly. She further alleged that he used to force her to perform obscene acts similar to the content viewed by him.

3. The complainant has made grave allegations to the effect that the applicant not only forced her into sexual activities but also compelled her to engage in sexual relations with his own sons—Mariappa and Vyankatesh. It is further alleged that such acts were recorded by the applicant in the form of videos. It is also stated that the applicant even recorded his own sexual acts with the complainant. The complainant alleges that on 31st August 2023, her sister received a sexually explicit video via WhatsApp from a relative named Praveenraj, and upon viewing the said video, the complainant realized that she herself was the woman in the video. It is alleged that the applicant's son Mariappa uploaded the said video on the internet at the instructions of the applicant. The complainant also alleges that she was drugged or made to consume an intoxicating substance by the applicant prior to the recording of such objectionable content. Based on these serious and disturbing allegations, an FIR was lodged on 1st September 2023 against the applicant and his two sons at Trombay Police Station. It is noted that the applicant had earlier preferred a bail

application before the learned Sessions Court, which came to be rejected. Hence, the present application has been preferred before this Court.

4. Learned advocate appearing for the applicant has contended that the relationship between the applicant and the complainant is that of husband and wife, and therefore, the provisions of Sections 376 and 376(2)(n) of IPC would not be applicable in the facts of the case. With respect to the charge under Section 376-D, it is argued that the acts were done with the consent of the complainant and there was no element of coercion. It is submitted that the alleged incident took place on 22nd June 2023, but the FIR was lodged only on 1st September 2023, after an unexplained delay of more than two months. It is argued that such a delay casts doubt on the genuineness of the allegations and lends support to the defence version that the acts were consensual. The learned counsel has also relied on the order passed by this Court in Bail Application No. 2944 of 2024, whereby Mariappa, the co-accused and step-son of the complainant, has been granted bail. Relying upon parity and delay in registration of FIR, it is prayed that the present applicant also deserves to be released on bail.

5. On the other hand, the learned APP has vehemently opposed the bail application. It is submitted that the statements of the complainant recorded under Section 161 as well as Section 164 of the Code of Criminal Procedure, 1973 clearly indicate that the applicant had continuously subjected the complainant to threats and coercion, thereby compelling her to engage in the acts as narrated in the FIR. It is specifically pointed out that on 22nd June

2023, the applicant administered an intoxicating substance to the complainant and thereafter committed the acts which are now subject matter of the FIR. In such circumstances, the learned APP submits that considering the gravity of the allegations and the role attributed to the applicant, no case is made out for grant of bail at this stage, and the application deserves to be rejected.

6. I have carefully considered the rival submissions made by the learned counsel appearing for the applicant and the learned APP for the State. I have also perused the material on record, including the copy of the FIR, the statements of the complainant recorded under Sections 161 and 164 of the Cr.P.C., and the bail order in favour of the co-accused Mariappa.

7. At the outset, it is required to be noted that the complainant is the legally wedded wife of the present applicant. The record indicates that the complainant and the applicant were residing together along with their children, including the sons of the applicant from a previous marriage. The allegations levelled by the complainant undoubtedly raise serious and disturbing concerns. However, for the purpose of adjudication of bail application, this Court is required to form a prima facie view and not to enter into a detailed analysis of the veracity or truthfulness of the allegations.

8. It is pertinent to note that the main allegation regarding the act of sexual assault involving the complainant and the applicant's sons is said to have occurred on 22nd June 2023. However, the FIR has been lodged more than two months later, on 1st September 2023. Though delay in lodging FIR cannot be the sole ground to

disbelieve the complainant, at the stage of bail, such delay does assume relevance in assessing whether the matter is of such gravity that custodial interrogation of the applicant is still necessary. The explanation for such delay is not elaborately stated in the FIR or the accompanying statements.

9. Furthermore, it is an admitted position that Mariappa, the step-son of the complainant, who is also alleged to have participated in the acts described in the FIR and is similarly placed, has been granted bail by this Court by order in Bail Application No. 2944 of 2024. Though the allegations against the present applicant are of a graver nature, parity with the co-accused is still a factor that cannot be ignored entirely, especially when the investigation is already completed and charge-sheet is stated to have been filed.

10. The learned APP has pointed out the statement of the complainant under Section 164 Cr.PC. alleging administration of an intoxicating substance by the applicant. While such an allegation is certainly grave and will be tested during trial, it must be noted that the said allegation is based solely on the statement of the complainant and is not presently supported by any independent medical or scientific evidence. Whether such substance was actually administered and whether the complainant was rendered unconscious are questions that will require proof and cannot be conclusively determined at this stage.

11. It is also submitted by the learned counsel for the applicant that the applicant is in custody since 1st September 2023, and no

further custodial interrogation is necessary. The investigation appears to be complete and the charge-sheet is stated to have been filed. Therefore, the continued incarceration of the applicant may not be necessary, especially when the trial is likely to take considerable time. The applicant is a permanent resident of the local jurisdiction and there is no material on record to suggest that he would flee from justice or tamper with evidence or influence witnesses if released on bail.

12. Having regard to the totality of facts and circumstances, including the delay in registration of FIR, the grant of bail to the co-accused, the marital relationship between the complainant and the applicant, the period of custody already undergone, and the fact that charge-sheet is filed, this Court is of the opinion that a case for grant of bail is made out.

13. In view of the above discussion and legal position, 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. 411 of 2023 registered with Trombay Police Station for offences punishable under Sections 376, 376(2)(n), 376-D, 328, 506-II, 323, 504, 114 of IPC, and Sections 67-A of the Information Technology Act, 2000, 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 directly or indirectly contact, influence, threaten or approach the victim or any witnesses in any manner.

(b) The applicant shall report to the Trombay 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 leave the territorial jurisdiction of the Trial Court without its prior written permission.

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

(e) If it is found that the applicant has violated any of the above conditions, the prosecution shall be at liberty to apply for cancellation of bail.

14. It is made clear that the observations made hereinabove are only for the purpose of deciding this bail application, and the same shall not be construed as an expression of opinion on the merits of the case at the stage of trial.

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

(AMIT BORKAR, J.)