

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

CRIMINAL BAIL APPLICATION NO. 817 OF 2025

Hitesh Kamlesh Gautam. ... Applicant.
Vs.
The State of Maharashtra. ... Respondent.

Mr. Priyanshu S. Mishra i/b. Mr. Sunil Tiwari, Advocate for the Applicant.
Mrs. M.H. Mhatre, APP for Respondent/State.
PSI Salunkhe, Wakad Police Station, Pune.

CORAM : ASHWIN D. BHOBE, J.

DATE : 2nd JULY, 2025.

P.C. :

1. Heard Mr. Priyanshu Mishra, learned Advocate for the Applicant and Mrs. Mhatre, learned APP for State.

2. By the present Application filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “BNSS”), the Applicant is seeking regular bail in Crime No. 1097 of 2024 registered at Wakad Police Station, Pune for the offences punishable under Sections 69, 318(4) of the Bharatiya Nyay Sanhita, 2023 (for short “BNS”). Said Crime is registered as Sessions Case No. 1012 of 2024 and is pending before the District Judge-7 & Additional Sessions Judge, Pune.

3. Case of the Prosecution is that the Applicant on a promise to marry the Complainant entered into physical relationship with the Complainant. Applicant taking advantage of the Complainant obtained an amount of Rs. 26,94,500/- from the Complainant for his treatment and for GST Case.

4. Applicant was arrested on 3rd December, 2024 and since then he is in jail. Bail Applications filed by the Applicant prior and subsequent to the filing of the charge-sheet were rejected by the learned District Judge-7 & Additional Sessions Judge, Pune by orders dated 21st December, 2024 and 28th January, 2025.

5. Mr. Mishra, learned Advocate for the Applicant submits that he has been falsely implicated in the crime by the Complainant. He submits that allegations made by the Complainant against the Applicant of promise to marry, having physical relations are false. He clarifies that the Applicant is suffering from AIDS (HIV+). He submits that it is not the case of the Complainant that the disease suffered by the Applicant is transferred to the Complainant, which fact according to the learned Advocate weighs in favour of the Applicant, to negate the allegations of physical relationship with the Complainant. He submits that FIR filed by the Complainant has a lot of inconsistencies which include the amount alleged to have been paid to the Applicant. He submits that the statement of the hotel owner where the Complainant has alleged

the Applicant to have had physical relation belies the case of the Complainant. He submits that the Applicant is in jail for 11 months. He submits that the maximum punishment for the offence charged against the Applicant would be 10 years. He submits that the Applicant is suffering from the ailments, which requires constant medical attention. He relies on Section 34 of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017.

6. Ms. Mhatre, learned APP for the State submits that the material on record indicates relationship between the Applicant and the Complainant. She submits that the Applicant having cheated the Complainant of her amounts is established from the material on record. She submits that the Applicant has criminal antecedents. She submits that the investigation is complete and charge-sheet is filed.

7. In response to the contention of the learned APP of the Applicant having criminal antecedents, Mr. Mishra, states that though there are criminal cases filed against the Applicant, the same are false cases. He submits that in the said cases, the Applicant has been enlarged on bail by the Trial Court.

8. I have perused the records with the assistance of the learned Advocates.

9. Perusal of the charge-sheet and the material on record prima facie suggest that the relationship, if any, between the Applicant and Complainant appears to be consensual. There appears to be inconsistencies in the claim of the Complainant with reference to the amount alleged to have been paid and reason for which the amount is said to have been paid to the Applicant. The Applicant is said to suffer from HIV Epilepsy (medical reports are at page 252 on wards of the Application). In somewhat similar circumstances, the Hon'ble Supreme Court had considered grant of bail to the accused suffering from HIV, in the case of Bhawani Singh v/s. State of Rajasthan¹

10. Having regard to the peculiar circumstances of the case, the nature of allegations made against the Applicant, the maximum punishment prescribed for the offences charged against the Applicant and taking into consideration the fact that the Applicant is suffering from HIV Epilepsy, this would be a case where the Applicant would be entitled to bail.

11. In view of the above, the Application is allowed on the following terms :

- i. Applicant shall be released on bail in Crime No.1097 of 2024 registered with Wakad Police Station, Pune for the offences punishable under Sections 69, 318(4) of the Bharatiya Nyay Sanhita, 2023 on furnishing P.R. Bond of Rs.

1 2022 SCC OnLine SC 1991

25,000/- (Rupees Twenty Five Thousand) with one or two sureties in the like amount, to the satisfaction of the District Judge-7 & Additional Sessions Judge, Pune;

ii. Applicant shall not directly or indirectly make any inducement, threat or promise to the Complainant or any person acquainted with the facts of the case, as also not tamper with the evidence;

iii. Applicant shall attend the trial in Sessions Case No. 1012 of 2024 pending before the Trial Court regularly on every date unless exempted by the Trial Court.

iv. The Applicant upon release within 3 days shall furnish his residential addresses with proof and contact details to the Trial Court and Investigating Officer, Wakad Police Station, Pune.

12. Bail Application No. 817 of 2025 is disposed of on the above terms.

(ASHWIN D. BHOBE, J.)