

Shabnoor

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

BAIL APPLICATION NO.1280 OF 2025

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Kabir Rangu Mulla

... Applicant

V/s.

State of Maharashtra & Anr.

... Respondents

Mr. Irfan A. Shaikh, for the applicant.

Mr. Sagar R. Agarkar, APP for the State – respondent No.1.

Ms. Ashwini Achari, for respondent No.2 (appointed as Legal Aid).

Mr. Suryakant Doke, PSI, Borivali Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 12, 2025

P.C.:

1. The present application has been filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking his release on regular bail in connection with Crime Register No. I-121 of 2021 registered with Borivali Police Station. The applicant has been charged with committing offences punishable under Sections 376(2)(i)(n) and 506 of the Indian Penal Code, 1860, as well as Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act”).

2. The brief facts as set out in the prosecution case are as follows: On 28 February 2021, a woman by the name of XYZ

lodged a complaint. She stated that she resides with her family. Her elder daughter stays at home, while her younger daughter attends school. The family of one Mulla, along with their relatives, reside in the same locality. About two weeks before lodging the complaint, the younger daughter (victim) complained of stomach pain. On 26 February 2021, the mother of the victim came to know that the applicant was engaging in inappropriate acts with her daughter. Upon being asked, the victim disclosed that for the past 3–4 months the applicant had been getting close to her. He had made a hole in the common wall of their houses, given her a phone, and used it to talk to her regularly.

3. It is alleged that on 14 January 2021, the applicant took the victim to the house of one Hanumant Rathod, led her to the bathroom, and committed sexual intercourse with her. A similar act was allegedly repeated at the same place. The applicant is also said to have threatened the victim that if she disclosed the incident to anyone, he would defame her. Based on these allegations, the offence came to be registered.

4. Learned counsel appearing for the applicant submitted that the applicant was arrested on 12 March 2021 and has been in custody since then. It is pointed out that the medical examination of the victim does not reveal any evidence of penetrative sexual assault. The prosecution has cited as many as 16 witnesses, charges are yet to be framed, and there is no possibility of the trial concluding in the near future. It is argued that given the length of custody and the stage of the proceedings, continued incarceration would serve no useful purpose, and therefore the applicant may be

released on bail, subject to appropriate conditions.

5. On the other hand, learned APP for the State and the learned Advocate appointed to represent the victim have strongly opposed the application. It is submitted that the victim is a person with intellectual disability, having an IQ of 53, and is therefore highly vulnerable. The allegations in the FIR clearly disclose that the applicant took advantage of the victim's mental condition and forcibly committed sexual intercourse with her. The statements of the victim recorded both before the police and under Section 164 of the Code of Criminal Procedure, 1973, are consistent and corroborate the prosecution case. In these circumstances, it is submitted that granting bail to the applicant would not be justified.

6. I have considered the submissions made on behalf of the applicant, the State, and the learned Advocate for the victim. I have also perused the material placed on record, including the FIR, statements of the victim, medical report, and other documents forming part of the charge-sheet.

7. It is an undisputed fact that the applicant has been in custody since 12 March 2021, i.e., for more than four years. The prosecution has cited 16 witnesses, and even the charges have not yet been framed. Considering the number of witnesses and the stage of the proceedings, there is no likelihood of the trial concluding in the near future. Prolonged pre-trial detention, without any reasonable possibility of early conclusion of trial, militates against the principles of personal liberty under Article 21

of the Constitution of India.

8. As regards the medical evidence, it is seen that the report does not indicate any definite signs of recent penetrative sexual assault. While the prosecution relies on the consistent version of the victim, the probative value of such evidence can only be tested during the trial. At this stage, the Court is required to see whether further continued incarceration of the applicant is necessary for the purposes of trial or investigation. In the present case, the investigation is already complete, the charge-sheet has been filed, and the applicant's presence can be secured by imposing suitable conditions.

9. It is true that the victim is stated to be a person with intellectual disability and therefore vulnerable, and such cases must be dealt with utmost sensitivity. However, bail does not amount to acquittal, and the liberty of the accused has to be balanced with the interest of justice. Adequate conditions can be imposed to ensure that the applicant does not in any manner influence the victim or witnesses.

10. In these circumstances, taking into account the period of incarceration already undergone, the stage of the trial, and the absence of any possibility of tampering with the prosecution evidence if suitable conditions are imposed, I am of the view that the applicant has made out a case for grant of bail.

11. Hence, the following order :

(i) The Bail Application is allowed.

(ii) The applicant shall be released on bail in connection with Crime Register No. I-121 of 2021 registered with Borivali Police Station for offences punishable under Sections 376(2)(i)(n) and 506 of IPC, and Sections 4, 8 and 12 of the POCSO 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 attend all proceedings before the Trial Court regularly, unless exempted by the Court on valid grounds supported by sufficient cause.

(c) The applicant shall report to the Borivali Police Station, Mumbai, once every three months on first monday of first week, between 10:00 a.m. and 12:00 noon, until further orders.

(d) The applicant shall not enter the jurisdiction of the Borivali Police Station, except for the purpose of marking his presence, as directed above.

(e) The applicant shall not leave the territorial jurisdiction of the Trial Court without its prior written permission.

(f) The applicant shall not commit any offence or engage

in any criminal activity during the pendency of the trial.

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

(AMIT BORKAR, J.)