

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1402 OF 2025

Ashish Purushotam Patel

.. Applicant

Versus

State of Maharashtra & Anr.

.. Respondents

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- Mr. Prabhanjay R. Dave a/w Mr. Pradeep P. Kumawat, Advocates for Applicant
- Mr. Rushikesh M. Pethe, APP for Respondent No. 1 - State
- Ms. Devyani Kulkarni, Advocate (appointed) for Respondent No. 2

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 29, 2025

P. C.:

1. Heard Mr. Dave, learned Advocate for Applicant; Mr. Pethe, learned APP for Respondent and Ms. Kulkarni, learned Advocate (appointed) for Respondent No. 2 through VC.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.PC.**") in connection with C.R. No. 51/2021 registered with Andheri Police Station for offences punishable under Sections 366(a), 370(1), (4), 372 r/w Section 34 of the Indian Penal Code, 1860 (for short, "**IPC**"); under Sections 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 and under Sections 4, 16, 17 and 18 of the Protection of Children from Sexual Offences Act, 2012. Applicant is

arrested on 28.01.2021 and as on today he has been in incarceration for a period of 4 years 3 months and 2 days.

3. It is seen that the statement of the prosecutrix recorded under Section 164 of Cr.P.C. appended at page No. 52 of the Application *prima facie* is not in consistency with the statement of the prosecutrix recorded under Section 161 at the time of lodging complaint. The name and nomenclature of the Applicant is seen missing and not reflected in Section 164 statement. In view of this discrepancy and dichotomy observed by the Court, the case of the Applicant will have to be considered for grant of bail.

4. Though Ms. Kulkarni, learned Advocate (appointed) for Respondent No. 2 would persuade the Court to consider the fact that the pre-trap panchnama relied upon by the prosecution in the present case be considered to ascertain the complicity of the Applicant, the veracity of the statement of the prosecutrix recorded under Section 164 *prima facie* would impel me to consider the Applicant's case. That apart I have also considered the *prima facie* material, *inter alia*, pertaining to WhatsApp chats appended to the Application for grant of bail. Rejection of the Applicant's previous Bail Application by order dated 01.08.2024 (Coram : Manish Pitale, J.) is also being considered and more specifically the directions contained in paragraph No. 9 of the said order.

5. In view of the above and the fact that Applicant is incarcerated for a period of 4 years 3 months and 2 days pending trial and the case of the prosecution not having proceeded any further thereafter when the prosecution had intended to examine 15 further witnesses as stated in the previous order, I am inclined to consider the case of the Applicant for grant of bail. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs. 25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs. 25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;

- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (vi) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

6. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

7. This Court appreciates the assistance rendered by Ms. Kulkarni, learned Advocate appointed through Legal Aid to espouse the cause of Respondent No. 2. Fees be paid by the High Court Legal Aid Services Authority of this Court to the learned appointed Advocate for Respondent No.2 as per rules on production of a server copy of this order.

8. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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Date:
2025.04.30
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