

Shabnoor

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

BAIL APPLICATION NO.1508 OF 2025

Vitthal Jyoti Tara

... Applicant

V/s.

State of Maharashtra & Anr.

... Respondents

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Mr. Nihal M. Mansuri, for the Applicant.

Ms. Mahalakshmi Ganapathy, APP for State –
respondent No.1.

Mr. Viral Mukte, for respondent No.2 (Appointed as
Legal Aid).

Mr. R. G. Gujar, Malad Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 13, 2025

P.C.:

1. This is an application under Section 483 of the Bhartiya Nagarik Suraksha Sanhita 2023 (“BNSS”), by which the applicant seeks his release on bail in connection with Crime Register No. 374 of 2024 registered with Malad Police Station, Mumbai. The said crime is registered for the offences punishable under Section 376 of the Indian Penal Code, 1860 (“IPC”), and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act”).

2. The prosecution case, in brief, is that the informant, a resident of District Kolhapur, lives there with his family and works

as a labourer. In July 2023, his minor daughter went to stay with her paternal aunt at Goregaon, Mumbai, for about two months, and thereafter returned to their village. On 24 April 2024, the victim started feeling unwell and was vomiting. She was taken to CPR Hospital at Kolhapur for medical examination. During the examination, the doctor informed the family that the victim was pregnant. Upon being questioned, the victim stated that during her stay in Goregaon, the son of her paternal aunt, namely the present applicant, had committed sexual intercourse with her without her consent in the house. Based on this statement, the present crime came to be registered.

3. Learned counsel for the applicant has drawn my attention to the DNA analysis report, which, according to him, conclusively excludes the possibility of the applicant being the biological father of the child born to the victim. He submits that this circumstance creates a serious doubt about the truthfulness of the allegations. He further submits that the applicant has already been in custody for about one year and three months, the investigation is complete, and the charge-sheet has been filed. On these grounds, he prays that the applicant be released on bail, subject to appropriate conditions.

4. Per contra, the learned Additional Public Prosecutor and the learned counsel appointed to represent the victim have strongly opposed the application. They submit that the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973 (corresponding to the relevant provision under the BNSS), as well as her other statements to the police, are

consistent and clearly implicate the applicant. It is their contention that merely because the DNA report excludes the applicant as the biological father, the same cannot by itself dislodge the victim's categorical assertion that the applicant committed sexual assault on her. They submit that the offence alleged is serious in nature, involving a minor victim, and releasing the applicant on bail at this stage would not be in the interest of justice. They, therefore, pray for rejection of the bail application.

5. I have considered the submissions of the learned counsel for the applicant, the learned Additional Public Prosecutor, and the learned counsel for the victim. I have also perused the material placed on record, including the FIR, the statements of the victim, the medical papers, and the DNA analysis report.

6. There is no dispute that the victim is a minor and, therefore, the provisions of the POCSO Act are attracted. The victim, in her statement under Section 164 of the Code of Criminal Procedure, 1973 (now corresponding to the relevant provision under the BNSS), has named the applicant as the person who committed the alleged act. Ordinarily, the statement of the victim, particularly in sexual offence cases, carries great weight. However, the DNA report, which is a scientific and independent piece of evidence, assumes significance in the present case. The said report categorically records that the applicant is excluded as the biological father of the child born to the victim.

7. It is true that the absence of a DNA match does not, by itself, conclusively establish innocence in all sexual offence cases, as

there can be situations where the act alleged did not result in conception. However, in the facts of the present case, the prosecution case is founded on a single incident during the victim's stay at the applicant's house. The medical evidence showing pregnancy, coupled with the DNA exclusion, prima facie creates a doubt regarding the correctness of the allegation against the applicant. This doubt, at the stage of considering bail, weighs in favour of granting liberty.

8. The applicant has been in custody for nearly one year and three months. The investigation is complete, and the charge-sheet has been filed. The trial will take some time to conclude. There is no material placed before me to indicate that the applicant has misused liberty in the past or that he is likely to threaten the victim or tamper with the evidence if released on bail. These circumstances persuade me to take a lenient view in favour of granting bail, subject to strict conditions to ensure the applicant's presence during trial and to safeguard the victim from any intimidation.

9. In view of the above discussion, the applicant deserves to be enlarged on bail. However, to ensure that the liberty granted is not misused, and to safeguard the victim and her family from any threat or coercion, the imposition of stringent conditions is warranted.

10. Hence, the following order :

(i) The Bail Application stands allowed.

(ii) The applicant shall be released on bail in connection

with Crime Register No. 374 of 2024 registered with Malad Police Station, for offences punishable under Sections 376 of IPC, Sections 4 and 6 of the POCSO Act, on executing a Personal Bond in the sum of ₹25,000/- (Rupees Twenty - Five Thousand only) with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court.

(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 prosecution and attend all trial dates regularly.

(c) The applicant shall not tamper with evidence or influence any witness.

(d) The applicant shall report to the Malad police station once in three monthsh (i.e., on 1st day of every month) between 10:00 a.m. to 12:00 noon, until further orders.

(e) The applicant shall furnish his current residential address and mobile number to the Investigating Officer, and shall inform the Investigating Officer of any change in address or contact details forthwith.

(f) In case of any breach of the conditions mentioned above, the prosecution shall be at liberty to move for cancellation of bail.

11. The Bail Application stands disposed of accordingly.

(AMIT BORKAR, J.)