

Ashish

ASHISH
SAHEBRAO
MHASKE
Digitally signed
by ASHISH
SAHEBRAO
MHASKE
DN: cn=ASHISH
SAHEBRAO
MHASKE, o=, ou=, email=ASHISH.SAHEBRAO@MHASKE.COM, c=IN, date=2025.08.21
19:06:45 +0530

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

BAIL APPLICATION NO. 2767 OF 2025

Farooque Majid Khan

... Applicant

V/s.

State of Maharashtra

... Respondent

Mr. Abdul Raheem Bukhari for the applicant.

Mr. Prasanna Malshe, APP for respondent No.1-State.

Mr. Vijay Pankar, P.S.I. Shantinagar Police Station,
Bhiwadni.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 20, 2025

P.C.:

1. By the instant bail application filed under Section 439 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short) / Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS" for short), the applicant is seeking his release on regular bail in connection with Crime Register No. 822 of 2023 registered with Shantinagar Police Station. The said crime has been registered for offences punishable under Sections 341, 370, 506, and 511 of the Indian Penal Code ("IPC" for short).

2. The prosecution story, as set out in the First Information Report, is that one Saziyakhatun Mohamad Ismail Ansari, a resident of Pirani Pada, Bhiwandi, lodged a report alleging that on 13th October, 2023 at around 5:00 p.m., her minor daughter,

namely Rehamunnisa, aged about 12 years, went alone to the nearby public toilet but did not return home. Despite making frantic inquiries with the relatives, neighbours, and in the surrounding locality, the girl could not be traced.

3. On the basis of the said report, an FIR bearing C.R. No. 822 of 2023 came to be registered at Shantinagar Police Station for the offence punishable under Section 363 of the IPC, alleging that some unknown person had enticed and abducted the minor girl from the lawful guardianship of her mother.

4. It is further revealed from the investigation papers that the minor girl was traced and rescued by the police on the very next day. Upon her recovery, her detailed statement came to be recorded. In her statement, the child narrated that after stepping out to use the municipal toilet, she was approached by an elderly woman in a burkha, who pretended to be visually impaired and requested the girl to assist her in reaching her house situated at Teen Batti Naka.

5. The victim further disclosed that while she was accompanying the said elderly woman, she was taken in a rickshaw by an unknown man to another location. At that place she was allegedly wrongfully confined, her hands tied, and she was threatened with dire consequences in case she attempted to raise alarm. It is alleged that the said rickshaw driver, along with a woman claiming to be his wife, hatched a plan to alter the identity of the child and to send her away to Malegaon under a false pretext. However, in the meanwhile, the girl somehow managed to

get access to a mobile phone belonging to the accused persons, from which she contacted her mother. Based on the said telephonic call, the police immediately swung into action, traced her location, and rescued the child from the clutches of the accused.

6. The learned Advocate appearing for the applicant, while pressing for bail, submitted that the wife of the applicant, who is a co-accused, has already been released on bail by this Court in Bail Application No. 1889 of 2024 by order dated 19th June, 2025. He therefore submitted that the applicant deserves to be granted bail on the principle of parity. He further submitted that the applicant has been falsely implicated in the present crime and that there is no cogent material connecting him to the alleged acts. It was argued that the prosecution has failed to conduct a proper test identification parade, and the applicant was not previously known to the victim. Thus, the identification of the applicant for the first time in the Court statement carries little evidentiary value. Learned Advocate further pointed out that the main role, as per the prosecution, is attributed to an unknown burkha-clad woman, who has not been traced or identified till date. According to him, this creates a serious gap in the prosecution case and severs the chain of circumstances.

7. He also sought to highlight that the so-called draft agreement, which the prosecution relies upon as incriminating evidence against the applicant, cannot be treated as such. Even assuming, for the sake of argument, that the document was prepared at the instance of the applicant, the same does not bear the signatures of any party, nor was it ever acted upon. It is further

his submission that no consideration was agreed to be paid under the said document, and therefore, the essential ingredients of Section 370 of the IPC, which deals with trafficking of persons for exploitation, are not attracted. He emphasized that the applicant has been in custody since 15th October, 2023, the investigation has been completed, and the charge-sheet has already been filed. In these circumstances, according to him, further incarceration of the applicant would serve no useful purpose and hence, the applicant deserves to be released on bail.

8. Per contra, the learned APP opposed the bail application and distinguished the case of the applicant from that of his wife, who has been granted bail. He submitted that the wife of the applicant was released on the ground that her role was limited and the allegations against her did not prima facie satisfy the ingredients of Section 370 of IPC. However, insofar as the present applicant is concerned, the allegations and material collected during investigation clearly implicate him for the offence of kidnapping under Section 363 of IPC, as well as other connected offences. The learned APP invited my attention to the categorical statement of the victim girl, who has specifically deposed that on the next day of the incident she was kept in the house of the applicant with her hands tied by a cloth. She further stated that the applicant himself threatened her with dire consequences if she disclosed anything to neighbours and also told her that he would prepare documents to change her name and send her to Malegaon.

9. The learned APP further submitted that the statement of the typist, who has been examined during investigation, clearly shows

that the applicant had personally instructed him to draft an agreement purporting to hand over the minor girl to third parties. The unsigned draft agreement was in fact recovered from the possession of the applicant, and the contents thereof show that there was a plan to pass off the minor girl in adoption under a false pretext. According to him, this material, coupled with the victim's statement, prima facie establishes the active involvement of the applicant in the kidnapping and wrongful confinement of the child. Considering the tender age of the victim, who was only 11 years old at the time of incident, and the seriousness of the offence, the learned APP prayed for rejection of the bail application.

10. I have carefully considered the rival submissions advanced on behalf of the applicant and the learned APP for the State. I have also gone through the material placed on record including the FIR, the statements of the victim and witnesses, and the recovery effected during investigation.

11. At the outset, it is necessary to note that the case involves kidnapping and wrongful confinement of a minor girl aged about 11 years. The law is well settled that in cases involving minor children, the Courts are required to adopt a cautious approach while considering the prayer for bail, keeping in view not only the liberty of the accused but also the safety and welfare of the child victim, which is of paramount importance.

12. The plea of parity raised by the applicant on the ground that his wife has been granted bail cannot be accepted in the facts of

the present case. The order granting bail to the wife was based on the finding that the allegations against her were not sufficient to attract the offence under Section 370 IPC and that her role was subsidiary. In contrast, the material collected during investigation attributes a central and active role to the present applicant. The victim has categorically stated that she was kept in the residence of the applicant, her hands were tied with a cloth, and she was threatened by the applicant not to disclose anything to neighbours. She has also disclosed that the applicant told her about preparing documents to change her name and to send her to Malegaon. These allegations are direct and specific in nature and cannot be brushed aside at this stage.

13. The contention that the test identification parade was not conducted or that the victim did not previously know the applicant also does not advance the case of the applicant. It is well recognised that when the victim has spent sufficient time in close proximity with the accused, her statement identifying him assumes great evidentiary value. In the present case, the victim was allegedly confined in the applicant's house and personally threatened by him. Her consistent statement gives prima facie assurance regarding the identity of the applicant.

14. The further submission regarding the draft agreement being unsigned and therefore not amounting to incriminating evidence also does not merit acceptance at this stage. The statement of the typist, who has specifically deposed that the applicant instructed him to prepare the agreement for handing over the minor girl to third parties, coupled with the recovery of the draft agreement

from the possession of the applicant, prima facie supports the prosecution case. It may be true that the agreement was unsigned and not acted upon, but its very preparation shows the intention and plan of the applicant to change the identity of the child and send her away. Such preparation constitutes a significant incriminating circumstance pointing to the role of the applicant in the commission of the offence.

15. The offences alleged against the applicant are grave and serious in nature. Section 370 IPC deals with trafficking of persons and Section 363 IPC deals with kidnapping of a minor from lawful guardianship. Both offences strike at the root of human dignity and safety of children. The menace of child trafficking is a serious social evil, and the Courts cannot take a lenient view while considering bail in such matters. The allegations against the applicant, if accepted at their face value, disclose a well-thought-out plan of enticing, confining, and attempting to transfer a minor girl under false pretext, which has far-reaching consequences not only for the victim but for the society at large.

16. It is also pertinent to note that the victim is of tender age, barely 11 years old. The Supreme Court has repeatedly held that in cases involving offences against children, the testimony of the child, if found to be consistent and trustworthy, should be given due weight even at the stage of bail. At this prima facie stage, the statement of the victim inspires confidence and squarely implicates the applicant.

17. Considering the gravity of the offence, the tender age of the victim, and the material collected during investigation which prima facie indicates the direct involvement of the applicant, I am of the considered view that this is not a fit case where the discretion of granting bail can be exercised in favour of the applicant. The principle of parity is clearly not attracted in the facts of the present case. The possibility of the applicant tampering with the prosecution evidence or influencing the child victim also cannot be ruled out if he is enlarged on bail.

18. In view of the aforesaid discussion, I hold that no case is made out for releasing the applicant on bail.

19. The bail application is rejected and disposed of.

(AMIT BORKAR, J.)