

AGK

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

BAIL APPLICATION NO.2872 OF 2025

Ganesh Ashok Sale	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Ms. Komal Sinha for the applicant (appointed as Legal Aid).

Mrs. Mahalakshmi Ganapathy, APP for the respondent-State.

Mr. Hanmant Oulkar, PI and Mr. Kadu, PSI, Mankhurd Police Station, Mumbai, are present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 26, 2025

P.C.:

1. By way of the present bail application filed under Section 439 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short), the applicant seeks her release on regular bail in connection with Crime Register No.429 of 2016 registered with Mankhurd Police Station, Mumbai. The said crime is for offences punishable under Sections 370(1), 370(3), 370(4), 370(5), 365, 363, and 34 of the Indian Penal Code, 1860 ("IPC" for short), read with Sections 81 and 82 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

2. The case of the prosecution, in brief, is that the present applicant (arrayed as accused No.6) is the husband of the main

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accused No.1. It is alleged that the applicant, along with co-accused, kidnapped a male child aged about one and a half years, son of the informant, and sold him to a witness. As per the prosecution version, the incident took place when one Ahmad Jafar, the child in question, was taken to the house of the maternal aunt of the complainant's mother, in front of the house of one Smt. Sunita. At that time, it is alleged that the present applicant and his wife, accused No.1, had come from Thane. While the child was playing there, the maternal aunt of the complainant's mother is stated to have told that the applicant would take Master Ahmad to their house. However, later in the evening, at about 18.30 hours, when the complainant returned home, she noticed that the child was missing. On making inquiries in the vicinity and with relatives, she realised that Master Ahmad had been kidnapped by unknown persons.

3. Learned counsel appointed on behalf of the applicant has submitted that the applicant has been in custody since 12th December 2016. The charges in the case have already been framed on 6th February 2019. Out of the six accused persons involved in the case, five have already been released on bail either by this Court or by the learned Sessions Court. It is contended that the role attributed to the present applicant is not of direct participation in the act of kidnapping but only of knowledge of the offence allegedly committed by the co-accused. Learned counsel, therefore, submits that having regard to the long period of incarceration suffered by the applicant, coupled with the fact that the applicant has no previous criminal antecedents, she deserves to be enlarged

on bail.

4. Per contra, the learned APP has vehemently opposed the prayer for bail. It is submitted that the evidence of a majority of the witnesses has already been recorded. Only three prosecution witnesses remain to be examined, and therefore, the trial is likely to conclude in the near future. On this ground, it is urged that there is no justification for releasing the applicant on bail at this stage, and the application, therefore, deserves to be rejected.

5. I have carefully perused the record as well as the rival submissions. It is not in dispute that the applicant has been in custody since December 2016, i.e., for a period of more than eight and a half years. The charges in the matter have already been framed more than six years ago. Despite this, the trial has not reached its conclusion. Even though the learned APP submits that only three witnesses remain to be examined, the fact remains that the applicant has undergone a prolonged incarceration which cannot be overlooked.

6. It is also significant that out of six accused persons, five have already been enlarged on bail either by this Court or by the Sessions Court. The principle of parity therefore squarely applies in the present case. The role attributed to the applicant is not of direct participation in the actual kidnapping but of being aware of the offence committed by the co-accused. Whether such knowledge can be established beyond reasonable doubt is a matter to be decided during trial, and at this stage, a prolonged detention without conclusion of trial would amount to undue hardship.

7. It is further noticed that the applicant does not have any criminal antecedents. There is no material to show that she would tamper with the prosecution evidence or abscond if released on bail. Appropriate conditions can be imposed to ensure her presence during trial.

8. In these circumstances, when the applicant has already suffered incarceration for nearly nine years, when co-accused are already on bail, and when trial is still not concluded, I am of the considered opinion that a further denial of bail would not be justified.

9. Considering the financial condition and limited economic capacity of the applicant, who has already requested the Jail Authorities to appoint an Advocate for representing him, it is evident that he is not in a position to furnish a high amount of surety. The object of granting bail is to secure the presence of the accused at the time of trial and not to impose an onerous financial burden which he cannot reasonably comply with. In my view, therefore, the ends of justice would be adequately met if the amount of cash surety to be furnished by the applicant is reduced to a reasonable figure. Such a course would balance both the requirement of law to ensure his attendance during trial and the applicant's inability to arrange for a heavy surety amount.

10. Hence, following order is passed:

- i) The bail application is allowed;
- ii) The applicant is directed to be released on regular bail in connection with Crime Register No.429 of 2016 registered

with Mankhurd Police Station, Mumbai for offences punishable under Sections 370(1), (3), (4), (5), 365, 363, 34 of the IPC read with Sections 81 and 82 of the J.J. Act, 2015, upon furnishing cash surety of Rs.10,000/- (Rupees Ten Thousand Only):

iii) Within a period of 12 weeks from the date of actual release of the applicant on regular bail, he shall furnish one or more sureties in the like amount, to the satisfaction of the 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, particularly family members of the deceased.

(b) The applicant shall remain present before the Trial Court on each and every date, unless specifically exempted by the Trial Court;

(c) The applicant shall not leave the territorial jurisdiction of the State of Maharashtra without its prior written permission of the trial court.

(d) The applicant shall not commit any offence or engage in any criminal activity during the pendency of the trial.

(e) The applicant shall, at the time of furnishing surety, provide his current residential address and mobile number to the Investigating Officer as well as the Trial Court, and shall inform the Court in writing of any change in residence or

contact details during the pendency of the case.

(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 is allowed and disposed of.

(AMIT BORKAR, J.)