

Shabnoor

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

BAIL APPLICATION NO.3345 OF 2025

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Tameem Harsalla Khan

... Applicant

V/s.

State of Maharashtra

... Respondent

Mr. Sudeep Pasbola, Sr. Advocate a/w Mr. Ayush Pasbola a/w Mr. Uttam Singh Rathore, for the applicant.

Ms. Megha S. Bajoria, APP for the State – respondent.

Mr. Chavan R. K., PSI, Kandivali Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 2, 2025

P.C.:

1. The present bail application is filed by the applicant under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), seeking his release in connection with Crime Register No. 225 of 2025 registered with Kandivali Police Station. The offences alleged against the applicant are punishable under Sections 323, 328, 376(2)(n), 377, 420, 504, 506 read with Section 34 of the Indian Penal Code, 1860.

2. The prosecution case, in brief, is that on 27th March 2025, the informant lodged her report alleging that during the period between 23rd November 2021 and 13th May 2022, she came in

contact with the present applicant through Facebook. It is alleged that the applicant assured her of marriage and in furtherance of that promise, on one occasion, he mixed some pills into a cold drink which the informant consumed, and thereafter, committed sexual intercourse with her in Hotel Spring Inn, Kandivali, Mumbai. It is further alleged that the applicant thereafter continued to have sexual intercourse with her on several occasions at different places without her consent and against her will. The prosecution also alleges that the applicant, along with three of his friends, committed sexual intercourse with the victim against her will and threatened that her private photographs would be made viral on social media. It is further alleged that during this period the applicant obtained financial assistance of Rs.10,00,000/- initially and thereafter in all received Rs.30,00,000/- from the informant and cheated her. On the basis of this report, crime came to be registered against the applicant and the co-accused persons.

3. Learned Senior Advocate appearing for the applicant has drawn my attention to the FIR and contended that though the alleged incidents are said to have occurred between November 2021 and May 2022, the FIR was lodged only on 27th March 2025. Thus, there is a delay of nearly three years in lodging the complaint, and no explanation for such an inordinate delay has been offered by the prosecution. It is urged that such unexplained delay itself creates doubt about the genuineness of the allegations.

4. It is further submitted that as per the version of the informant herself, she had voluntarily accompanied the applicant to a hotel on the first occasion and there was no force or coercion

applied. It is also an admitted fact that during the same period, she had advanced financial help of Rs.30,00,000/- to the applicant. Thus, the relationship between the parties was of a consensual nature and not one of forcible exploitation. The allegations of gang rape, said to have occurred during the same period at different places in Mumbai and Pune, are also inconsistent with the conduct of the informant who continued to interact with the applicant and extend financial support. In these circumstances, it is argued that the delay in filing FIR, coupled with the nature of allegations and admitted financial transactions, entitles the applicant to the relief of bail.

5. On the other hand, learned APP has strongly opposed the bail application. She submits that the allegations made in the statement of the victim recorded under Section 161 of the Code of Criminal Procedure, 1973 are fully consistent with her statement recorded under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023. It is submitted that the narration clearly reveals that the applicant not only deceived the informant with a false promise of marriage but also, along with his associates, committed repeated acts of sexual assault amounting to gang rape. The allegations are grave and serious in nature, involving threat, coercion, and financial exploitation. It is, therefore, urged that considering the seriousness of the offences, the applicant does not deserve the discretionary relief of bail.

6. I have carefully considered the rival submissions and perused the material on record. At the outset, it is not in dispute that the FIR came to be lodged on 27th March 2025, though the alleged

incidents pertain to the period between November 2021 and May 2022. Thus, there is a gap of almost three years in lodging the complaint. No convincing explanation is forthcoming from the prosecution for such an inordinate delay. The settled position of law is that delay in lodging the FIR is not by itself fatal; however, when such delay remains unexplained, it does create a cloud of doubt about the veracity of the allegations, particularly in a case where the parties were in contact over a considerable period of time and had financial dealings between themselves.

7. From the FIR and statement of the victim, it appears that she voluntarily accompanied the applicant to the hotel on the first occasion. It is also her case that she had advanced a sum of Rs.30,00,000/- to the applicant during the same period when the alleged incidents occurred. The very fact that large financial transactions were taking place between the informant and the applicant indicates that the relationship between them was not confined to one of coercion or threat alone but had other facets. These aspects will certainly require deeper scrutiny at the stage of trial, but at the stage of considering bail, they cannot be brushed aside.

8. As regards the allegation of gang rape, the same is stated to have occurred between November 2021 and May 2022. Even after the alleged acts, the victim continued to remain in contact with the applicant and continued to part with money. Such conduct, though not conclusive, does cast doubt about the nature of relationship being portrayed as one of continuous coercion. At this prima facie stage, it would not be proper to go into the credibility of the

prosecution version, which is a matter for trial.

9. The offences alleged are undoubtedly serious in nature. At the same time, the Court cannot overlook the fact that the applicant has been in custody since his arrest and investigation is stated to be substantially complete. The charge-sheet has been filed and custodial interrogation of the applicant is no longer required. The possibility of tampering with evidence or absconding can be taken care of by imposing stringent conditions.

10. Bail is a rule and jail is an exception. The discretion to grant bail has to be exercised balancing the seriousness of allegations with the fundamental right to personal liberty under Article 21 of the Constitution. Having regard to the unexplained delay in lodging the FIR, the admitted financial dealings between the parties, and the stage of investigation, I am of the considered opinion 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. 225 of 2025 registered with Kandivali Police Station for offences punishable under Sections 323, 328, 376(2)(n), 377, 420, 504, 506 read with Section 34 of IPC, 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, particularly family members of the victim.
- (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 Kandivali Police Station once in three months between 10.00 a.m. and 12.00 noon, until further orders.
- (d) The applicant shall not leave the territorial jurisdiction of the State of Maharashtra without the prior written permission of the Trial Court.
- (e) The applicant shall not commit any offence or engage in any criminal activity during the pendency of the trial.
- (f) 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.

12. The Bail Application stands disposed of in above terms.

(AMIT BORKAR, J.)