

Ajit Pathrikar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3638 OF 2025**

Tushar Hitendrasinh Pal	...Applicant
Versus	
State of Maharashtra	...Respondent

Mr. M. A. Khan, Krishnakant Pandey, Hamza Shaikh, *for the Applicant.*
Ms. Megha S. Bajoria, *APP for the State-Respondent No.1.*
Mr. Mangesh Madhav Deshmukh, *for Respondent No.2.*

CORAM Dr. Neela Gokhale, J.
DATED: 18th November 2025

PC:-

1. The Applicant seeks his release on bail in connection with FIR No. 34 of 2025 dated 22nd April 2025 registered with the Airport Police Station, Brihanmumbai City for the offences punishable under Sections 316(2), 318(4), 351(3) and 69 of the Bhartiya Nyaya Sanhita, 2023 (for short, “BNS”).

2. The facts of the case, in brief, are that the First Informant/Complainant, 36 years of age and the Applicant, 30 years of age, both married to their respective spouses, were

in relationship with each other. It is alleged in the FIR that the Applicant had assured the First Informant that he would get divorce from his wife and marry her. Similar assurances were made by the First Informant to the Applicant regarding her own marriage. It is further alleged that, in view of the relationship, the Applicant took money from the First Informant, from time to time. A total amount of Rs.1,35,00,000/- along with a gold bracelet, weighing approx 25 grams, were given by her to the Applicant. She has further alleged that the Applicant never had the intention to marry her and he has siphoned off the said amount. Thus, she made a complaint to the police, pursuant to which the FIR was registered. The Applicant was arrested on 26th April, 2025 and he is in custody from the past seven months.

3. The Applicant made an application seeking bail before the Additional Sessions Judge, Borivali Division, Goregaon, Mumbai. However, by order dated 6th June 2025, the said

application was rejected. Hence, the Applicant is before this Court seeking the relief as prayed.

4. Mr. M. A. Khan, learned Counsel for the Applicant, submits that the relationship between the parties was consensual in nature. Both the parties were married to their respective spouses and were well aware of the others' marital status. Despite having knowledge of the fact that the Applicant was married and also the fact that the First Informant herself, was not in a position to get married to the Applicant, the relationship continued. Mr. Khan further submits that, there was a business transaction between the Applicant and the brother of the First Informant and pursuant to that transaction, he received some amounts from the First Informant's brother through the First Informant to invest in several FOREX dealings. He has also brought to my attention the bank statements of the First Informant in HDFC and ICICI banks, which according to him, reveal huge amounts credited by the Applicant, in her account. He submits that this amount

was deposited by the Applicant in the complainant's account, pursuant to the business transactions between him and her brother. He fairly concedes that, out of the amount given to him by the First Informant's brother through the First Informant, only an amount of Rs. 65,55,000/- remains to be refunded to the Applicant, which he, in any case, is ready and willing to return. In these circumstances, Mr. Khan submits that no case is made out against the Applicant and there is no material to indicate his complicity in the said offence. He therefore, prays that the Applicant be enlarged on bail.

5. Per contra, Ms. Megha Bajoria, learned APP, submits that the statement of the First Informant recorded under Section 164 of the Cr.P.C. is consistent with the story in the FIR. She however, leaves it to the Court to pass an appropriate order.

6. Mr. Mangesh Deshmukh, learned Counsel for the First Informant, has brought to my notice an affidavit dated 29th September 2025 affirmed by the First Informant. She contests the Bail Application on the grounds averred in the Affidavit

that, the Applicant has committed breach of her trust and it is likely that he will tamper with the evidence and influence the witnesses, if released on bail. She has also averred that there is a possibility that he will abscond and not be available to face the trial. Mr. Deshmukh also pointed to an affidavit dated 6th June 2025, affirmed by one Ms. Surbhi Hitendra Pal, said to be the sister of the Applicant, wherein she has assured that if bail is granted to the Applicant, the Applicant will pay the amount to the First Informant, as stated in the said affidavit. He thus, submits that the Court should direct the Applicant to pay the said amount as stated in the affidavit to the First Informant.

7. Heard learned Counsels appearing for the respective parties and perused the record with their assistance.

8. It *prima facie* appears from the material on record and the affidavit affirmed by the First Informant, as well as the affidavit of the Applicant's sister placed on record by the First Informant, annexed to her affidavit in reply that, this is a case

filed solely to arm-twist the Applicant in refunding/paying certain amounts, alleged to have been given to him by the First Informant. A plain reading of the FIR and the statement of the First Informant also indicates that there was a consensual relationship between the parties. Both were aware of their respective marital status. Section 69 of the BNS is invoked to allege that her consent to the sexual relationship was taken by deceitful means, on an assurance that the Applicant will divorce his wife and marry her. The First Informant, however, forgets that even if the Applicant was desirous and intended to marry her, she herself was married and no decree of divorce is yet passed in respect of her own marriage, by any Court of competent jurisdiction. In these circumstances, *prima facie*, there is no material on record to indicate that the offence under Section 69 of the BNS is committed by the Applicant at this stage.

9. Reference may be made to a catena of decisions of the Supreme Court, that the mere fact that physical relations were

established pursuant to a promise to marry will not amount to a rape in every case. In order for the offence of rape to be made out, two conditions need to be satisfied i.e. that the promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intention of fulfilling said promise from the very beginning, and that the false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. [See: *Pramod Suryabhan Pawar v. The State of Maharashtra and Ors.*¹; *Mahesh Damu Khare v. The State of Maharashtra and Ors.*²] Hence, *prima facie*, considering the marital status of the First Informant herself, there is no question of concluding that the Applicant never intended to marry her, as she herself is not yet available to marry him. The conclusion of 'deceit' is pre-mature.

10. Coming to the second limb of the allegation in respect of criminal breach of trust concerning the financial aspect, it

1 (2019) 9 SCC 608

2 2024 SCC OnLine SC 347

appears from the statement of the First Informant's brother, that there were some business transactions between the Applicant and him. Undoubtedly, there appear to be some amounts given by the First Informant and her brother to the Applicant, however, the same were in pursuance of a business transaction and no criminal intent can be discerned at this stage. The affirming of the affidavit by the Applicant's sister, during the course of hearing of the bail application before the Sessions Court, stating that the Applicant will refund the stated amount to the First Informant is disturbing. No such offer or undertaking to return some amount in exchange for consent for grant of bail is contemplated under any statute. Such arrangements are deprecated, especially when the allegations against the Applicant pertain to sexual exploitation by deceitful means.

11. For the reasons stated above, I am inclined to enlarge the Applicant on bail and it is ordered as under:

ORDER

- i) The Applicant be enlarged on bail, on executing PR Bond in the sum of Rs.50,000/- with one or two local sureties in the like amount;
- ii) The Applicant shall attend the Police Station concerned, on first Monday of every month between 10:00 am. and 12:00 pm., till the charges are framed by the Trial Court. He shall also attend the Trial Court concerned on each and every date as directed, till the conclusion of the trial, save and except if the Applicant is exempted from appearance by orders of the Trial Court;
- iii) If the Applicant has not deposited his passport, the Applicant shall deposit the same with the concerned Police Station, if any;
- iv) The Applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

v) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and / or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the Police Station concerned;

vi) The Applicant to co-operate with the conduct of the trial;

vii) Any infraction of the aforesaid conditions shall entail cancellation of bail;

12. Application is allowed in the above terms and is accordingly disposed of.

13. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

(Dr. Neela Gokhale, J)