

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4543 OF 2025**

Mukeshkumar Mahendraprasad Kushwaha ...**Applicant**

Versus

State of Maharashtra ...**Respondent**

Mr. Amit Ashok Karva, for the Applicant.

Ms. Anamika Malhotra, APP for the Respondent-State.

CORAM DR. NEELA GOKHALE, J.

DATED: 08TH DECEMBER 2025

PC:-

1. By this Application, the Applicant seeks his enlargement on bail in connection with FIR No. 712 of 2025 dated 30th October 2025 registered with the Tilak Nagar Police Station (Dombivali), Thane City for the offences punishable under Sections 64(2)(d), 88, 352 and 351 of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS').

2. The case of the complainant, as discerned from the FIR, is that the First Informant, aged 35 years, is married to one,

Chalu Patil. She has a son aged 10 years. She is an employee in the HDFC bank. It is her contention that she is estranged from her husband for past 6 years and is residing along with her son, in her parents house. She met the Applicant when he came to her house to do some electrical work. As he was also a driver engaged in the business of arranging tours, the First Informant's friends engaged the Applicant for a trip and in this way, the Applicant and the First Informant became friends. Thereafter, they became intimate. Intimacy led to a sexual relationship between the parties. According to the First Informant, the Applicant professed his love for her and also promised to marry her. According to her, on this pretext and the assurance that he will marry her, she consented to the sexual relations. Out of the said relationship, she became pregnant and as per the dictates of the Applicant, on 21st August 2024, she terminated the pregnancy. The Applicant had sent her Rs.10,000/- towards the said expenses. However, the Applicant reneged on his promise to marry her and hence, she has filed the present FIR.

3. Mr. Amit Karva, learned counsel appearing for the Applicant, submits that relationship between the Applicant and the First Informant was consensual in nature; the Applicant was already married and hence, there was no question of any promise to marry her. He also submits that the First Informant was a willing participant in the relationship and as such, the Applicant has not committed any offence much less, the offence as alleged against him. He further submits that the First Informant herself is 35 years of age and the Applicant is 26 years of age and therefore, there is no question of any threat or dominant position of the Applicant leading to coercion, as alleged by the First Informant. He thus, prays that the Applicant be enlarged on bail.

4. Ms. Anamika Malhotra, learned APP representing the State in the matter, resists the Bail Application and submits that consent of the First Informant can be ascertained only during the course of trial. She further submits that the First Informant has alleged that the Applicant insisted on sexual

relations with her on the pretext of marriage, when in fact there was no intention to marry. She also submits that the charge-sheet is yet to be filed and hence, the Bail Application at this stage be rejected.

5. Heard learned counsel appearing for the respective parties and perused the record with their assistance.

6. A plain reading of the FIR indicates that the First Informant herself, is a married lady of 35 years of age, having a son of 10 years. The prosecutrix is a mature woman and is able to understand the consequence of her actions. The Applicant was aware that marriage was not possible since, she herself is a married woman. In a catena of decisions, the Supreme Court has held that the mere fact that physical relations were established pursuant to a promise to marry will not amount to rape in every case. Marriage in this case was not possible unless her existing marriage was dissolved by a decree of divorce by the Court of competent jurisdiction. In the complaint, she has narrated that she accompanied the

Applicant to various places and was in a relationship with him. In these circumstances, *prima facie*, it appears that the relationship was consensual in nature and it is only when the Applicant refused to marry her that the present FIR was registered.

7. In these circumstances, I am inclined to enlarge the Applicant on bail. It is accordingly 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 Trial Court concerned on each and every date unless exempted by the orders of the Trial Court concerned;

iii) The Applicant shall also attend the Police Station concerned once in a month between 11:00 a.m. to 02:00 p.m.;

iv) If the Applicant has not deposited his passport, if any, the Applicant shall deposit the same with the Police Station concerned;

v) The Applicant shall not leave India, without the permission of the Trial Court;

vi) The Applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

vii) The Applicant shall inform his latest place of residence and 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;

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

ix) Any infraction of the aforesaid conditions shall entail cancellation of bail.

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

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

(DR. NEELA GOKHALE, J)

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signed by
SHAMBHAVI
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