

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

Anticipatory Bail Application No. 1251 of 2025

Mohsin Aliyar Khan

Age 36 years, Occ: Freelancer,

R/o. Paan Building,

Shani Mandir Road,

Qazi Plot, Bhusawal, Jalgaon.

... Applicant.

versus

1. The State of Maharashtra

(At the instance of the PI -

D N Nagar Police Station,

Mumbai vide C.R. 1309/2024)

2. XYZ

... Respondents

Mr Aniket Nikam i/b Mr Amit Icham, for the Applicant.

Mr Prashant Jadhav, APP, for Respondent / State.

Mr Shivamsinh Deshmukh a/w Mr Jatin Adhav, for
Respondent No.2 / Original Complainant.

PI Sachin Khondre, D N Nagar Police Station, Mumbai.

Coram : R.N.Laddha, J.

Date : 17 June 2025.

P.C. :

By this application, the applicant (accused No.3) seeks pre-arrest bail in connection with CR No.1309 of 2024, registered at DN Nagar Police Station, Andheri, Mumbai,

for offences punishable under Sections 70(1), 115(2), 351(2) read with 3(5) of the Bharatiya Nyaya Sanhita, 2023.

2. The prosecution alleges that the informant/ victim had known to accused No.1 for the past ten years. On 8 December 2024, accused No.1 called the informant and asked her to meet him at Vilas Bar & Restaurant, located on Link Road, Andheri (West). In response, the informant met accused No.1 at the said location, where he introduced her to accused No.2. All three individuals then consumed alcohol together. At around 11:00 p.m., accused No.1 invited the informant to his residence for another drink. Subsequently, accused No.1, accused No.2 and the informant went to flat No.704, Sai-Krishna Kunj building, Andheri (West). There, accused No.1 offered the informant a drink laced with an unknown substance. Thereafter, accused No.1 took the informant to the bedroom, tied her hands, covered her mouth, and raped her. He also physically assaulted her. Following this, accused No.2 and the present applicant raped the informant. Thereafter, the informant succeeded in contacting her uncle on her mobile phone and sent her location. The informant then pleaded with accused No.1 to let her go. Accused No.1 threatened

to kill her if she revealed the incident to anyone.

3. The learned Counsel for the applicant submits that the applicant has never met the informant. On the night in question, he was at Corrum Mall, Thane, and returned to his resident at around 3:00 a.m. In contrast, the informant has alleged that the co-accused introduced her to the applicant sometime after 11:00 p.m. at flat no.704, Sai-Krishna Kunj building, Andheri (West). He submits that the distance between Corrum Mall and the alleged place of incidence is approximately 25 kms.

4. The learned Counsel further submits that at around 1:54 a.m. on 9 December 2024, the applicant booked a railway ticket to travel to his native place and made the payment via Google Pay. As per the transcript of the CCTV footage of the building, the applicant is seen arriving at the said flat at approximately 2:58 a.m., and later, at around 4:57 a.m., he went to LT Terminus, Kurla, to board his train. The learned Counsel further submits that there are no fresh injuries on the informant to corroborate the allegations of sexual assault against the applicant. The learned Counsel also states that the applicant is ready and

willing to comply with any conditions that may be imposed by this Court. He submits that the role attributed to the applicant is similar to that of accused No.1, who has already been granted regular bail.

5. The learned APP and the learned Counsel representing respondent No.2 jointly oppose the applicant's plea for pre-arrest bail, contending that the offence is of a grave nature and carries a minimum sentence of 20 years imprisonment. They submit that CCTV footage clearly shows the applicant's presence at the building during the relevant time. They submit that the informant promptly lodged an FIR following the incident. The learned APP also draws the Court's attention to the medical papers, which indicate that the informant sustained scratch marks, allegedly in an attempt to resist the assault. They point out that the applicant's specific role is detailed in both the FIR and the subsequent statement given by the informant.

6. This Court has given anxious consideration to the rival submissions canvassed across the bar, and also perused the record.

7. It is a settled principle in law that the power to grant anticipatory bail is an extraordinary power. While it has been acknowledged in many instances that regular bail is considered a general rule, the same cannot be said for anticipatory bail. The decision to grant anticipatory bail should be exercised with careful and prudent discretion by the court taking into account the specific circumstances of each case.

8. Upon perusing the records, it appears that accused No.1 and the informant were known to each other prior to the alleged incident. The present applicant has been specifically named in the FIR, with distinct and direct allegations attributed to him. The FIR was lodged promptly following the alleged occurrence, which lends credence to the version of the informant. It is alleged that the applicant along with two co-accused persons, committed forcible sexual intercourse with the informant, taking undue advantage of her vulnerable situation. The CCTV footage *prima facie* demonstrates the applicant's presence at the location where the incident is stated to have occurred. Further, it is alleged that accused No.1 lured the informant to the scene of the offence, where he physically restrained

her by tying her hands and gagging her, thereby facilitating the commission of offence by all three accused, including the applicant. The medical examination report annexed at page 97 indicates the presence of multiple injuries on the person of the informant, including scratch marks on the left side of the neck, and blunt force trauma on the chest and forehead, which are consistent with the allegations of physical assault and sexual violence. The nature of the allegations made against the applicant are grave and serious, involving offences punishable under Sections pertaining to sexual assault and physical violence.

9. In view of the above, this Court is not inclined to exercise discretion in favour of the applicant. As a result, the application stands rejected.

[R. N. Laddha, J.]