

Shabnoor

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

BAIL APPLICATION NO. 4761 OF 2024

Onkar Sanjay Bhoj	... Applicant
V/s.	
State of Maharashtra	... Respondent

**WITH
INTERIM APPLICATION NO.1503 OF 2025
IN
BAIL APPLICATION NO. 4761 OF 2024**

**WITH
BAIL APPLICATION NO. 1449 OF 2025**

Vinayak Prakash Matekar & Anr.	... Applicants
V/s.	
State of Maharashtra	... Respondent

Mr. Bhanudas Jagtap, for the applicant in all BAs.
Mr. Shyamkaran R. Choudahry for the Intervener in IA.
Mr. Sagar R. Agarkar, APP for the State – respondent.
Mr. Sanjay Pawar, PSI Gorai Police Station, Mumbai.

CORAM : AMIT BORKAR, J.

DATED : JUNE 19, 2025

P.C.:

1. These are applications preferred by the respective applicants under Section 439 of the Code of Criminal Procedure, 1973, seeking their release on bail in connection with Crime Register

No.28 of 2024, registered with Gorai Police Station. The applicants have been arraigned for offences punishable under Sections 376, 376-D, 354, 504 read with Section 34 of the Indian Penal Code, 1860.

2. The case of the prosecution, in brief, is that the victim, who is stated to be 18 years of age, on 12th June 2024 at about 3:00 p.m., went to Danapani Beach, Malad along with accused Nos.1 and 2, namely Kapil and Onkar, who are known to her. It is alleged that thereafter all of them proceeded to Marve-Gorai, where accused No.2 is stated to have booked a room in a lodge. As per the prosecution, the victim and the accused consumed liquor, and thereafter, taking advantage of the victim being under the influence of alcohol, accused Nos.1 and 2 allegedly committed forcible sexual intercourse with her, one after another.

3. Further, it is alleged that on 16th June 2024, the victim was again called by accused No.1 to Trauma Care Hospital at Jogeshwari, where she met the accused persons, including other co-accused. Thereafter, they again took her to Danapani Beach, where the alleged acts of forcible sexual intercourse were repeated. Based on these incidents, the victim lodged a report at the concerned police station, resulting in registration of the present crime. The applicants had approached the learned Sessions Court for grant of bail, which came to be rejected. Hence, the present applications have been filed before this Court.

4. Learned Advocate appearing for the applicants submitted that the version of the victim does not inspire confidence and is

inherently improbable. It was submitted that, according to her own statement, the first alleged incident occurred on 12th June 2024, and despite that, she again voluntarily accompanied the same accused persons on 16th June 2024 to the same location, i.e., Danapani Beach. This, according to the learned counsel, shows that the allegations of forcible sexual assault are doubtful. He further pointed out that the prosecutrix has filed an affidavit before the Trial Court stating that the complaint was lodged under pressure and fear of her parents, and that the allegations were made under duress. It was, therefore, urged that the applicants may be released on bail, more so when the investigation is substantially over.

5. Per contra, learned APP appearing for the State opposed the bail applications. He drew my attention to the statement of the victim recorded under Section 164 of the Criminal Procedure Code, which, according to him, is consistent with the earlier statement of the victim recorded under Section 161 of Cr.P.C. It was submitted that the offences alleged are serious in nature and concern sexual violence against a young woman, and that such allegations, at this stage, cannot be brushed aside merely on the basis of an affidavit purportedly filed by the victim. It was submitted that in such cases, the true nature of the relationship, the voluntariness of the victim's acts, and the question of consent would have to be tested during trial, and not at the stage of bail. Therefore, he submitted that the applicants do not deserve to be released on bail at this juncture.

6. Having carefully perused the charge sheet, including the statement of the victim recorded under Section 161 Cr.P.C. and her statement recorded under Section 164 Cr.P.C. before the learned Magistrate, as well as considering the overall material placed on record, this Court is of the view that the applicants deserve to be released on bail for the following reasons:

7. It is the specific case of the prosecution that on 12th June 2024, the prosecutrix, who is admittedly a major, went along with accused Nos.1 and 2 to Danapani Beach and then to a lodge at Marve-Gorai, where they consumed liquor. It is alleged that accused No.2, who was in a relationship with the victim, and his friend accused No.1, had forcible sexual intercourse with her one after another. However, the conduct of the prosecutrix, who again, just four days later, on 16th June 2024, voluntarily met the same accused persons and accompanied them once again to the very same location, makes the allegations of repeated forcible sexual intercourse appear doubtful, at least at this stage.

8. When considered from the perspective of a reasonable person, it appears unnatural and improbable that a victim of alleged gang rape would, within a short span of time, again accompany the very same accused persons to a secluded location, without any compulsion or threat shown on record. The version that she once again went to Danapani Beach along with the same persons who had allegedly violated her dignity just a few days earlier raises serious questions about the voluntary nature of her actions.

9. Moreover, it is not in dispute that the prosecutrix was 18 years of age at the time of the alleged incidents, and was, therefore, legally competent to make her own decisions. The statement made by the victim under Section 164 Cr.PC. is sought to be weakened by the subsequent affidavit filed by her before the Trial Court, wherein she has stated that the complaint was filed under fear and pressure from her parents and that she has no objection to the grant of bail to the applicants. In the facts and circumstances of the present case, this affidavit, though not conclusive, can be taken into consideration for the limited purpose of evaluating whether the applicants deserve bail pending trial.

10. It is also noted that the charges in the case are yet to be framed, and considering the number of witnesses cited by the prosecution, the commencement and conclusion of trial in the near future appears unlikely. The applicants are in custody, and the investigation appears to be substantially complete. In such circumstances, continued incarceration of the applicants may not be warranted, particularly when the possibility of the trial being unduly delayed cannot be ruled out.

11. This Court is also of the view that appropriate conditions can be imposed to ensure that the applicants do not misuse the liberty granted to them and do not influence the prosecutrix or tamper with the prosecution evidence.

12. In view of the above discussion and legal position, the following order is passed:

(a) The Bail Application is allowed.

(b) The applicants, i) Onkar Sanjay Bhoj, ii) Vinayak Prakash Matekar, iii) Kapil Santosh Nikam shall be released on cash bail in connection with Crime No. 28 of 2024 registered with Gorai Police Station for offences punishable under Sections 376, 376-D, 354, 504 read with 34 of IPC, upon each of them furnishing cash bail of ₹25,000/- (Rupees Twenty-Five Thousand only).

(c) Within a period of four weeks from the date of their release, the applicants shall furnish a Personal Bond of ₹25,000/- (Rupees Twenty-Five Thousand only) each, with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court, subject to the following conditions:

(d) The applicants shall not tamper with evidence, or directly or indirectly contact, influence, threaten, or intimidate any witness, particularly family members of the victim.

(e) The applicants shall attend all proceedings before the Trial Court regularly, unless exempted by the Court on valid grounds supported by sufficient cause.

(f) The applicants shall not leave the territorial jurisdiction of the Trial Court without its prior written permission.

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

(h) The applicants shall, at the time of furnishing surety,

provide their 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.

13. The Bail Applications stand disposed of in above terms.

14. In view of disposal of the Bail Applications, nothing remains to be adjudicated in the interim application. Hence, the interim application stands disposed of.

(AMIT BORKAR, J.)