

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

**INTERIM APPLICATION NO. 3036 OF 2025
IN
CRIMINAL APPLICATION NO. 879 OF 2025**

Mohammad Hassan Imran
Shaikh

...Applicant

Vs.

The State of Maharashtra

...Respondent

Adv. Ganesh Gupta a/w Adv. Jamal Khan, Adv. Sahil Ghorpade, Adv. Surya Prakash Gupta, Adv. Madan K., Adv. Priyanka Rathod i/by GG Legal Associate	Advocate for the Applicant
Ms. S. E. Phad	APP for the Respondent-State
PSI Archana Jadhav	Nayanagar Police Station

CORAM : S. M. MODAK, J.

DATE : 11th AUGUST 2025

P. C. :-

1. Heard learned Advocate for the Applicant-original accused and learned APP.
2. The Applicant came to be arrested in connection with C.R. No.

218 of 2025 registered with Nayanagar Police Station for offence punishable under Section 137(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023. The first informant is mother of the accused. So also, she is mother of the kidnapped boy. In nutshell, the present Applicant is brother of the kidnapped boy. On suspicion, the present Applicant came to be arrested on 08.08.2025 and he was produced on the same date before the Court of JMFC, Mira Bhayandar Road. After hearing both the sides and verifying the compliance, the learned Magistrate instead of granting him bail, has remanded him to the Police custody till today. The learned Magistrate has noted in the order that anticipatory bail application was rejected and custodial interrogation of the Applicant is necessary. However, the learned Judge has overlooked one fact that is the compliance of the provisions of Section 478 of the Bharatiya Nagarik Suraksha Sanhita, 2023 which is equivalent to Section 436 of the Criminal Procedure Code.

3. When the offence is bailable in nature and when the accused is ready to furnish bail, it is the duty of learned Magistrate to grant him bail. The only limitation is about furnishing the surety. The learned Judge has totally overlooked this legal provision and wrongly

remanded the Applicant to Police Custody. The order cannot be sustained in the eyes of law. It needs to be set aside. As already the bail application of this Applicant is pending before the learned Magistrate, let the learned Magistrate to decide the same on its own merits. This order is passed on interim application and the main prayer in the Criminal Application is of that sort only. So the main application can be also disposed of. Hence, the order:-

ORDER

- (i) The Interim Application is allowed.
- (ii) The order dated 09.08.2025 passed by the Court of the JMFC, Mira Bhayander in C.R. No. 218 of 2025 is quashed and set aside.
- (iii) The Applicant be released on bail on furnishing the bail before the concerned Magistrate, if not required in any other case.
- (iv) The quantum of the bail be decided by learned Magistrate.
- (v) The investigating officer is present. Let the intimation be given by Investigating Officer to the

learned APP in trial court about passing of the order.

4. With these observations, Interim Application and Criminal Application are disposed of.

[S. M. MODAK, J.]