

Prasad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3455 OF 2025

Mukhtar Ahmed Mohd Shaikh

...Applicant

Versus

State Of Maharashtra and Anr.

...Respondents

Mr. Vipul Dushing i/by Tanmay T. Kate, for the Applicant.

Ms. Sangeeta Shinde, APP for the Respondent - State.

Ms. Komal Sinha, for the Respondent No.2 / victim.

PSI – S.K.B. Gherade, Wadala Truck Terminal Police Station,
present.

CORAM: R. M. JOSHI, J.

DATED: 16th MARCH, 2026.

PC:-

1. The Applicant seeks his enlargement on bail in connection with CR No.682 of 2024 registered with Wadala Truck Terminal Police Station for the offence punishable under Sections 65(i), 137(2) of the Bharatiya Nyaya Sanhita, 2023 and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences, 2012 (POCSO). The Applicant came to be arrested on 24th September, 2024. On completion of investigation the charge-sheet is filed.

2. It is the case of the prosecution that on 23rd September, 2024, an incident occurred at about 03:00 p.m., wherein the present Applicant committed forceful sexual intercourse with the victim aged about 14 years. It is further case

of the prosecution that the said incident has occurred inside a container. The victim's statement was recorded on the same day. She was admitted in hospital however before she could be medically examined she left the hospital. Her further statement could not be recorded by the police nor her medical examination could be conducted.

3. Learned Advocate for the Applicant submits that herein in this case there is no evidence to indicate that the Applicant was produced before the Magistrate within 24 hours of his arrest. It is his submission that the Applicant was arrested on 24th September, 2024, whereas he was produced on 30th September, 2024. It is his further argument that there is no evidence in the charge-sheet to indicate that he was incapable of performing sexual intercourse. Apart from this, it is his submission that in absence of medical examination of the victim, it cannot be said that offence in question has occurred.

4. Learned APP and learned counsel for Respondent No.2 oppose the bail application. It is their contention that the victim is aged about 14 years as per the statement of the eye witness, she was found along with the Applicant/accused in a container. It is further contended that the witness specifically states about he being disclosed by the girl of the incident of the Applicant committing rape on her. It is argued that merely because the victim leaves the hospital after subjecting herself to the examination, it cannot be said that there is no evidence against the Applicant. Learned APP submits that there is evidence on record to indicate that the Applicant was suffering from high blood pressure and

therefore was not produced before the Magistrate within 24 hours. This according to her is sufficient explanation for his non production before the Magistrate.

5. There is no dispute made by the prosecution with regard to the fact that on 24th September, 2024, the Applicant came to be arrested by the concerned police station. Further, admittedly, he was produced before the Magistrate on 30th September, 2024. Merely because there is evidence on record indicating that the blood pressure of the Applicant was high at the relevant time, that by itself does not become a ground for non production of the accused before the Magistrate within 24 hours. Pertinently, the Applicant was taken to Sir J.J. Hospital. Needless to say that the Applicant was not produced before the Magistrate within 24 hours of arrest and hence his detention cannot be considered as legal so also subsequent remand.

6. As far as the medical examination of the victim is concerned, no doubt she was medically examined and she also recorded history before the medical officer. The history given by the victim before the medical officer however indicates that the incident in question has occurred in a room wherein there was even a bathroom. This history given to the medical officer is falsified with the statement of witnesses who claim that the incident had occurred in a container. The spot panchanama also indicates that the place of occurrence of the incident is a container wherein there was no bathroom. In the light of the fact that the victim came to Mumbai for medical treatment on account of injury

caused to her brain, it is difficult to accept the version of the victim unless supported by any other evidence.

7. The medical officer opinion does not support any recent intercourse having been committed with the victim. Apart from this, when admittedly an eye witness was present at the spot and was taken to the police station on 23rd September, 2024 itself, the statement came to be recorded on 2nd October, 2024. There is no explanation for non recording of the statement of this witness immediately. This Court therefore finds substance in contention of learned counsel for the Applicant that only for the reason that the victim ran away from the hospital and her statement could not be recorded under Section 164 of the Cr.PC, statement of this witness came to be recorded.

8. In the light of these facts, there is no evidence to indicate that accused is capable of performing sexual intercourse. In any case, in absence of such evidence coupled with the inconsistencies in the case of the prosecution, the age of the Applicant and the Applicant with no criminal history behind him make him entitle to be enlarged on bail. Hence, following order.

ORDER

- a) The Application is allowed.
- b) The Applicant is directed to be released on bail upon furnishing a personal bond of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two solvent sureties in the like amount, to the satisfaction of the Trial Court.

- c) The Applicant shall not tamper with the evidence or attempt to influence any witness.
- d) The Applicant shall appear before the Trial Court on every date of hearing, unless prevented by sufficient cause.
- e) The Applicant shall not contact the victim or any other witness whatsoever.

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.

(R. M. JOSHI, J.)