

Navnath Waghmare (RA)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 3993 OF 2025

Saksham Rajkumar Sharma

...Applicant

Versus

The State of Maharashtra & Anr

...Respondents

Mr. Advait Shukla a/w N. Singh for the Applicant.

Mr. Asadulla Shaikh a/w Aatif Pathan for the Respondent No.2

Mr. S.S. Ghag, APP, for the Respondent-State.

Mr. Kawankar, PI, Andheri Police station

CORAM: R. M. JOSHI, J.

DATED: 07th MARCH, 2026

PC:-

1. This application is filed for regular bail in CR No. 448 of 2025 registered Andheri Police Station, Mumbai for the offence under 64(2)(m), 77 and 351(2) of the Bhartiya Nyaya Sanhita, 2023 (for short 'BNS')

2. First informant in the report would contend that she met the applicant on 11.07.2020 and in the first meeting they decided to marry. She claims that applicant by putting sindoor on the head applicant posed himself to her be husband. Thereafter there were physical relations between them. It is claimed that she found applicant recording their nude video but she prevented him from

recording the same. She also claims that from time to time she gave different gifts and money to the applicant. According to her there was quarrel between her and applicant, after which applicant stopped contacting her. However, thereafter he tried to re-establish contact with her, so also tendered apology. They again decided to marry as early as possible and thereafter they continued their physical relationship, which is claimed to be on false promise of marriage, different other allegations are made by the informant. Sum and substance of the First Information Report (for short 'F.I.R.') is that since 2020 both of them were in a physical relationship, and such relationship was established at different places including, hotels. It is finally claimed that on the basis of videos and photographs, applicant established physical relations with her.

3. Admittedly, pursuant to the said report, Applicant came to be arrested on 16.06.2025. The investigation has been concluded and has culminated in filing of chargesheet on 14.08.2025, since then Applicant has been behind bars.

4. Learned counsel for the Applicant submits that the informant is a major, as per her statement in F.I.R., the relationship between them cannot be considered as forcible one or under the false promise of marriage. It is further submitted that over a period of four years, physical relations are there between two adult persons, which is sufficient to indicate consensual relationship. It is further argued that in the chargesheet there is absolutely no evidence

collected, indicating any obscene videos or photographs being taken by the applicant, on the basis of which the informant could be forced to subject herself to a sexual relationship. It is submitted that applicant has no criminal history, and after conclusion of investigation he cannot be behind the bars by way of pre-trial punishment.

5. Learned APP states that offence is serious in nature and allegations of informant indicating that this is a case of false promise of marriage. On specific query made by this Court with regard to there being any evidence indicating photographs or videos which can be said to have been used for forcing the informant to surrender to the physical relationship with the applicant, on instructions from the officer, who is present in the court, this court is informed that there is no such evidence found in investigation, though the mobile phone of the accused came to be seized.

6. Learned counsel for the Respondent No.2 opposed the application. It is his contention that merely because relationship between them was spread over for a period of four years that will not be sufficient hold that it is a consensual relationship. It is his submission that by applying sindoor on head of the informant, the applicant has made her to believe that he is her husband and therefore the theory of false promise of marriage deserves to be accepted. It is his further submission that investigation has not been done properly and therefore an application is made for

further investigation before the Trial Court. It is his further submission that the investigating officer has not considered the evidence brought to his notice with regard to the photographs and videos. Finally he argues that this Court cannot consider /appreciate the evidence on record for the purpose of deciding the bail application. To support this submission he relied upon the judgment of the Hon'ble Supreme Court in the case of *State of Karnataka versus J.R. Mahadevan;J .* He also places reliance on the judgment of the Delhi High Court in Criminal Revision Petition bearing no. 556 of 2017 in the case of *State (Govt. of NCT of Delhi) versus Gaurang Kadyan.*

7. From the perusal of the F.I.R. itself, it is clear that this is a case of physical relationship over a period of more than four years between two adults. Though, it is sought to be alleged by the informant in the F.I.R. that, on the basis of photographs and videos she was forced to subject herself to the physical relationship, in the chargesheet however, there is absolutely no evidence to indicate so. This Court has made specific query to learned counsel for Respondent No.2 as to whether he has any evidence to indicate that such Photographs and videos were taken, which can be used for compelling the informant into a sexual relationship against her will. In this regard, it is contended that there are photographs of both of them however, the same have not been placed before the Court even for perusal in order to accept the contention of the informant in that regard.

8. Learned counsel for the Applicant contends that an application has been filed before the trial court for further investigation of crime. Though it is a matter of fact that the application has been filed seeking further investigation into the crime admittedly, till date no order has been passed by the trial Court granting any such permission. This Court therefore needs to consider *prima-facie* material in the chargesheet to decide present application.

9. The informant at the time of lodging of the F.I.R. was aged about 33 years, and it is difficult to accept that she would consider an act putting up sindoor on her head by the applicant to be a marriage between them. Merely because there is evidence on record to showing both of them having stayed in different hotel at different points of time, that would not be sufficient to hold that this is a case of relationship on false promise of marriage or forcible physical relationship between them in absence of any evidence collected during the course of investigation indicating any photographs or video which can be used for forcing informant to subject herself to the physical relationship with the applicant. At this stage, the said contention, since not supported by any evidence cannot be accepted. More particularly when there is long relationship between two adult persons.

10. Insofar as the judgment of the Delhi High Court in the case of Gaurang Kadyan (*supra*) is concerned, the said order has been passed on an application for discharge and not in

connection with bail. Insofar as the judgment of the Hon'ble Supreme Court is concerned, it lays down broad principles for the grant of bail. Wherein it is observed that a detailed evaluation of the evidence on record is not expected at the stage of bail. That, however, does not mean that court should ignore the glaring evidence / material on record which, on the face of it is sufficient for grant of bail. The Applicant has no criminal history behind him and is not likely to flee from justice. He cannot be kept behind the bars by way of pre-trial sentence.

11. Hence the following order.

ORDER

- i) Application stands allowed.
- ii) Applicant is enlarged on bail in connection CR No. 448 of 2025 registered Andheri Police Station, Mumbai for enlarged on bail on furnishing PR Bond of Rs. 15,000/- with one surety in the like amount, to the satisfaction of the Trial Court.
- iii) The Applicant shall not contact directly or indirectly victim or any witness in any manner whatsoever.
- iv) Applicant to attend each hearing of the trial court on all scheduled dates except exempted by the court.

(R. M. JOSHI, J.)