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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 5166 OF 2024

Vinayak Mahadev Sawant

...Applicant.

Versus

State of Maharashtra.

...Respondent.

Mr. Girish Kulkarni, Senior Advocate a/w. Mr. K.N. Pandey and Mr. Chaitanya Purankar, Advocate for the Applicant.

Mr. T.G. Khan, APP for the Respondent-State.

PSI Shrikant Gadage, Khed Police Station.

CORAM: ASHWIN D. BHOBE, J

DATED: 21st AUGUST, 2025

PC:-

1. Heard Mr. Girish Kulkarni, learned Senior Advocate for the Applicant and Mr. T.G. Khan, learned A.P.P. for the State/Respondent.

2. By the present Application filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS" for short), the Applicant is before this Court seeking regular bail in connection with Crime No. 321 of 2024 registered on 21st May, 2024 with Khed Police Station, for the offences punishable under Section 366, 376(B), 506 read with Sec. 34 of the Indian Penal Code. Crime No. 321 of 2024 is registered as Sessions case No. 118 of 2024 and is pending on the file of Additional Sessions Judge, Khed-

Rajgurunagar, Dist. Pune.

3. There are two accused in the Crime No. 321 of 2024. Applicant is Accused No. 2. Accused No. 1 is absconding.

4. FIR was registered on the complaint lodged by the victim. Case of the prosecution is that on 13th May, 2022 at about 3 p.m. victim made a call to her husband and asked him to collect her from Khed. Her husband requested her to stop near Hotel Shriram at Pabal Chowk. At Khed S.T. stand victim requested a passer-by to lend his mobile so as to enable her to make a phone call to her husband. Said person handed his mobile from which the victim made a call to her husband. After about 5 to 10 minutes the person from whose mobile the victim had made the call, told victim that the he would drop her at Kalus. Victim sat on the rear seat of the car driven by the said person. A minor boy was seated on the front seat and an unknown person was seated on the rear seat of the said car. Said car proceeded towards Pune side. The boy seating on the front seat was dropped near one chowk. Thereafter, the car was taken at a kaccha road where the victim claims that she was raped, in turns by persons accused in Crime No. 321 of 2024.

5. Applicant was arrested on 23rd May, 2024. Bail Application at Exh. 3 filed in Sessions Case No. 118 of 2024 was dismissed by the Additional Sessions Judge, Khed-Rajgurunagar, Dist. Pune vide order dated 30th September, 2024.

6. Mr. Kulkarni, learned Senior Advocate for the Applicant submits that the incident as alleged against the Applicant appears to be doubtful from a

bare reading of the complaint lodged by the victim. He submits that the incident is alleged to be of 13th May, 2024, whereas the FIR was lodged on 21st May, 2024, after a delay of 8 days. He submits that there is no explanation for the delay. He submits that this would not be the conduct of a prudent person who is subjected to sexual assault. He submits that the statement of the boy who was seated on the front seat of the car does not support the case of the prosecution.

7. In addition to the grounds on merits, Mr. Kulkarni, learned Senior counsel for the Applicant seeks bail on the ground of medical condition of the Applicant.

8. Mr. Khan, learned APP for the State submits that the victim had referred to the manner in which she was subjected to sexual assault at the hands of both the accused. He submits that she has reiterated her case in her statement recorded under Section 164 of the Cr.P.C. He submits that the victim was terrified by the act committed on her and therefore, delay in registration of FIR would not be fatal.

9. Mr. Khan, has today tendered the Prisoner's Medical Report dated 29th July, 2025 from Chief Medical Officer, Yerwada. The same is taken on record and marked as "X" Colly. for identification.

10. Perused the records with the assistance of the learned Advocates.

11. FIR indicates that the victim who was waiting for her husband, made a phone call to her husband, from a mobile borrowed from a stranger. Despite her husband requesting her to stay at the particular point, the victim

took a lift offered by the stranger whose mobile phone was used by her to make a call to her husband. Victim travelled in a car wherein a boy was seated on the front seat and an unknown person was seated on the rear seat. Victim sat on the rear seat of the car. Said boy was dropped at a chowk. Thereafter car was taken to a katcha road. Victim was allegedly raped in turns by the Victim in the car. After the alleged act, the victim was dropped. Victim went to her residence. Statement of victim recorded under section 164 of Cr.P.C. do not make any reference of the victim having raised any alarm or having offered any resistance when the car was taken to the Katacha road or when she was subjected to the alleged sexual assault or at the time she was dropped from the car. Complaint was filed after 8 days of the incident. Statement of the boy who was seated on the front seat does not indicate of any untoward incident. Medical records of the victim do not reflect any injury or forced sexual assault. Prima facie, the material on record does not support the prosecution case.

12. Mr. Girish Kulkarni, by referring to paragraph no. 11 of the medical report of the Applicant ("X" Colly), submits that Applicant has medical issues related to enlargement of liver which requires immediate attention and treatment from specialist hepatologist, which is not available in the prison. Para no. 11 of the medical report is extracted herein below :-

"11) Referral to higher center (if any): The prisoner was referred to Kamla Nehru Hospital Pune on 21.05.2025 for MRI Cervical Spine with whole spine screening and to K.E.M Hospital Pune for HLA-B27 Blood test. The tests reports are attached with this report.

Prisoner was referred on 28.07.2025 to SGH, Pune. Orthopedic experts examined him and advised medicines and above mentioned physiotherapy. Surgery specialists examined him and advised ultrasonography of abdomen and pelvis. The report showed "Borderline hepatomegaly".

13. Considering the nature of allegation, the material on record, as also the medical report, continuation of the Applicant in jail pending the trial would not be warranted. Co-accused is said to be absconding.

14. In view of the above, present Bail Application is allowed on the following conditions :-

a. Applicant is directed to be released on bail in connection with Crime No. 321 of 2024 registered with Khed Police Station, Dist. Pune on executing PR. Bond in the sum of Rs. 25,000/- with one or two local sureties in the like amount to the satisfaction of the Additional Sessions Judge, Khed-Rajgurunagar, Dist. Pune.

b. Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of accusation, so as to dissuade such person from disclosing such facts to the Court or to any police officer. Applicant shall not tamper with evidence in any manner.

c. Applicant shall not contact the victim or any family member of the victim.

d. Applicant upon his release, within a period of three days from his release, shall furnish his cell phone number and residential address with proof to the Investigating Officer, Khed Police Station, District-Pune and shall keep the same updated, in

case of any change thereto.

e. Applicant shall co-operate in the conduct of the trial of Sessions Case No. 118 of 2024 and shall regularly attend the hearing of the case pending on the file of Additional Sessions Judge, Khed-Rajgurunagar, Dist. Pune, on each and every date, unless exempted from appearance.

15. Criminal Bail Application No. 5166 of 2024 stands disposed of..

(ASHWIN D. BHOBE,J.)