



Ajit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 4185 OF 2024

Amol Motiram Borde

...Applicant

Versus

State Of Maharashtra and Anr.

...Respondents

Mr. Prashant Pandey *a/w Dinesh Jadhvani a/w Ridhima
Mangaonkar a/w Sumati Gupta i/b W3Legal LLP for the
Applicant.*

Ms. Megha S. Bajoria, *APP for the State-Respondent No.1.*

Ms. Racheeta Dhuru *a/w Nasir Hussain a/w Prachi Anil Parte
for Respondent No.2.*

PSI – Bapurao Haral, *Vanrai Police Station, is present.*

CORAM

Dr. Neela Gokhale, J.

RESERVED ON:

16th September 2025

PRONOUNCED ON:

19th September 2025

JUDGMENT:-

1. The Applicant seeks his enlargement on bail in connection with C.R. No. 75 of 2024 dated 19th February 2024 registered with the Vanarai Police Station, Brihanmumbai City, for the offence punishable under Section 376 of the Indian Penal Code, 1860.

2. Before advertng to the submissions made by the parties relating to the grant of bail, it is necessary to provide a brief conspectus of the prosecution's case against the Applicant.

3. The case of the prosecution as discerned from the FIR is that the victim and the Applicant were working in Hub-town, a real estate company at Bandra (W), Mumbai. The Applicant is about 34 years of age and the victim is aged about 41 years. They were colleagues and, on many occasions, while working together, the Applicant had declared his love for the victim. This feeling was however, not reciprocated by the Applicant and she had so conveyed to him.

4. It is alleged that on 18th February 2024, the victim arranged a party at her residence. She invited a few friends including the Applicant to her house. Only a friend named Natasha and the Applicant showed up and the other friends did not attend the party. The Applicant and the victim were drinking alcohol while said Natasha was having a soft drink. At around 1 a.m. Natasha left the house and the Applicant

also made to leave. However, he remained in house on the pretext that he would leave after finishing his last peg. The victim went to the bathroom in her bedroom. When she came out, she found the Applicant in the bedroom, having locked the door. He forcibly pulled her on the bed and raped her violently. When the victim asked for some water as a pretext to escape from his clutches, the Applicant brought water and threw it on her face saying that he loved her and he would ensure that she birthed his child so that she will be compelled to marry him. He raped her violently twice and at around 3.30 a.m. left the house.

5. It is further alleged that the victim was scared and texted her friends Pranay, Natasha and Priyank, narrating her ordeal to them on WhatsApp. In the morning, her friend Pranay called her and came to her house. Thereafter, the victim narrated the incident to her mother on telephone and after confiding in her, made the complaint. Accordingly, the FIR was registered.

6. The Applicant filed Bail Application No. 429 of 2024 before the Sessions Court at Dindoshi. However, by order dated 13th August 2024, his bail application was rejected. Hence, he has filed the present bail application for the relief as prayed.

7. Mr. Prashant Pandey, learned Counsel appearing for the Applicant, raised various contentions. Firstly, on merits he submitted that there was a relationship between the Applicant and the victim and the entire incident was consensual. To buttress this contention, he drew my attention to some photographs of the victim and the Applicant taken in a hotel, on Valentine's Day. He submitted that both of them had booked a room at the Dragonfly-The Art Hotel and had spent four hours in the hotel room. He pointed to some chats on WhatsApp, exchanged between the parties which according to him indicate a relationship. Mr. Pandey also brought to my attention chat messages sent to the Applicant by the victim on the date of incident, asking him to come to her house quickly

as she was missing him and her other friend Natasha had already reached her house. Mr. Pandey also said that on the following morning, he ordered food to be delivered to her house. Mr. Pandey admits that although the victim refused to accept the food delivery, the conduct indicates a relationship between them. He also submits that there is six-hour delay on the part of the victim in filing the FIR and it was only after consultation with her friend Pranay, that she lodged the complaint. Mr. Pandey contends that the victim is in relationship with said Pranay and hence, made a false complaint at his instance.

8. Mr. Pandey's second contention pertains to noncompliance of Section 50 of the Cr. P. C. According to him, the grounds of arrest were not provided to him in writing. He placed reliance on the following decisions of the Supreme Court as well as this Court:- *Vihaan Kumar Vs. State of Haryana and Anr.*¹, *State of Karnataka Vs. Sri Darshan Etc.*²,

1 (2025) 5 SCC 799

2 (2025) SCC OnLine SC 1702

*Sundeep Kumar Bafna Vs. State of Maharashtra and Anr.*³,
*Rahul Daaji Landge Vs. The State of Maharashtra and Anr.*⁴,
*Ashrafbhai Ibrahimhai Kalavdiya Vs. Union of India and Anr.*⁵

On these two grounds, Mr. Pandey urges the Court to allow the bail application.

9. Per contra, Ms. Megha Bajoria, learned APP representing the State, sought to negate the arguments made by Mr. Pandey. On merits, she submitted that there was no love relationship between the parties. The photographs relied upon by Mr. Pandey do not show the Applicant and victim in one frame; the photo of the hotel is that of the banquet room and not of any hotel room; and none of the chats even remotely suggest any intimate relationship between the parties.

10. Ms. Bajoria read out the statement of the victim which clearly indicates a violent sexual assault on her. She also pointed to the statements of the victim's mother and three

3 (2014) 16 SCC 623

4 In W.P. No. 4415 of 2025 dated 9th September 2025

5 (2025) SCC OnLine Bom 2972

friends namely Pranay, Natasha and Priyank which are consistent with the victim's statement. She also showed the WhatsApp chats of the victim narrating the incident to them. She drew my attention to the medical report of the victim showing the injuries, the CA report and the case diary. Ms. Bajoria therefore, contended that there was no consensual relationship between the victim and the Applicant and the case is that of a violent sexual assault.

11. Countering the argument of Mr. Pandey in respect of noncompliance of Section 50 of the Cr. P. C., Ms. Bajoria relied upon the case diary which indicates that the grounds of arrest were communicated to the Applicant, his father was intimated about his arrest, and no prejudice was caused to the Applicant on account of not receiving the grounds of arrest in writing. She submitted that the Trial Court had remanded the Applicant to police custody for two days and thereafter, remanded him to judicial custody. Ms. Bajoria submitted that the Applicant was avoiding arrest and was ultimately traced to

a location in Chembur from where he was arrested. She also invited my attention to the *roznama* of the Trial Court to indicate that the Applicant had refused to cooperate in the framing of charges and had repeatedly sought adjournments on the ground that he wanted to appoint an advocate. Ms. Bajoria submitted that this pretext is totally contrary to the *roznama* of earlier dates which records that the advocate of the Applicant is absent. This clearly shows that the Applicant was simply delaying the trial.

12. Another important aspect flagged by Ms. Bajoria are the antecedents of the Applicant. She pointed to an earlier FIR No. 835 of 2020 dated 29th November 2020 registered with the MIDC Police Station, Mumbai for offences punishable under Section 363 of the IPC. It was later revealed that the victim girl in that CR was minor and thus, POCSO offences were also added to the charge-sheet. The gravity of the offence was such that the victim in that case ultimately

committed suicide. In these circumstances, Ms. Bajoria urges the Court to reject the bail application.

13. Ms. Racheeta Dhuru, learned Counsel represented the Respondent No.2 and supported the contentions of the learned APP. Additionally, she contended that while giving his address to the doctor, the Applicant has mentioned an address of Aurangabad. This indicates that the Applicant intends to abscond. She supported Ms. Bajoria's contention that there was no intimate relationship between victim and the Applicant and the victim did not have any consensual sexual relationship with him. Ms. Dhuru also opposes the bail application.

14. I have heard the Counsel appearing for the respective parties and have gone through the record with their assistance. The Supreme Court has, in a catena of judgments, outlined the considerations on the basis of which discretion under Section 439 of Cr. P. C. has to be exercised while granting bail. In *Gurcharan Singh and Ors. Vs. State (Delhi*

Administration)⁶, the Apex Court held as to the various parameters which must be considered while granting bail. The Court held as follows:

“24. ...Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.”

15. The above considerations have been consistently followed by the Apex Court. In *Prasanta Kumar Sarkar Vs. Ashis Chatterjee and Anr.*⁷, the Supreme Court held as under:

6 (1978) 1 SCC 118

7 (2010) 14 SCC 496

“9. ... It is well settled that, among other circumstances the factors to be borne in mind while considering the applications for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.”

16. Applying the aforesaid principles and having perused the material on record, it is seen that the statement of the victim is consistent with the statements of her three friends and her mother. All the statements show that the incident happened between at 1 a.m. and 3.30 a.m. on the intervening night of 19th February 2024 at the victim's house. The Applicant left her house in the wee hours of the morning of 20th February 2024 and immediately in the morning after

narrating the incident to her mother, the victim lodged the complaint. In fact, she texted her friends about the incident immediately after the Applicant left her home. There is thus no delay in registration of the FIR.

17. The medical documents evidence multiple bruises on her arms in addition to as many as nine injuries. These injuries reveal a strong resistance by the victim to the Applicant's assault. The CA report giving the result of analysis of the bedsheet and clothes including underwear corroborates the Applicant's narration of the incident. The victim's statement to the doctor is also consistent with her statement. The photographs and the WhatsApp chats between the Applicant and the victim, by no stretch, demonstrate any intimate relationship between them. Thus, there is no reason to believe that the act was consensual. The nature and gravity of the offence is quite serious.

18. The documents submitted by Ms. Bajoria to show the antecedents of the Applicant clearly reveal the tendencies of

the Applicant. There is a serious case under Section 363, 376 (2), 366, 366 (a) of IPC read with Section 4, 6 of POCSO Act vide FIR No. 835 of 2020 against him. The Applicant has committed the present offence while he is on bail in the previous CR. The allegations in the earlier CR were also grave, in as much as the Applicant being already married, had eloped with a minor girl, having promised to marry her and forcing sexual relations on her. The said minor girl ultimately committed suicide. The trial in that matter is pending. Considering the said antecedent of the Applicant in a similar offence demonstrates the Applicant's leaning tendencies, creating a reasonable apprehension that there is a likelihood of the Applicant repeating such conduct.

19. Another contention raised by Mr. Pandey is on the ground of breach of mandate of Section 50 of Cr. P. C. Both the Counsel have placed reliance on *Vihaan Kumar (supra)*. The Supreme Court while dealing with the requirement of

informing grounds of arrest as soon as may be after the arrest,
in paragraph 26 held as under:

“26. Therefore, we conclude:

26.1. The requirement of informing a person arrest of grounds of arrest is a mandatory requirement of Article 22(1);

26.2. The Information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;

26.3. When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the investigating officer/agency to prove compliance with the requirements of Article 22(1);

26.4. Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not

vitiate the investigation, charge-sheet and trial. But, at the same time, filing of charge-sheet will not validate a breach of constitutional mandate under Article 22(1);

26.5. When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and

26.6. When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.”

20. The decision in *Vihaan Kumar (supra)* is followed in various decisions of the Supreme Court as well as various High Courts on the said aspect. The Supreme Court in its recent decision in *Sri Darshan (supra)* held that delay in furnishing the grounds of arrest cannot, by itself constitute a valid ground for grant of bail. Paragraph 20.1 reads thus:

“20.1. Delay in furnishing the grounds of arrest cannot, by itself, constitute a valid ground for grant of bail.

20.1.1. The learned counsel for the respondents - accused contended that the arrest was illegal as the grounds of arrest were not furnished immediately in writing, thereby violating Article 22 (1) of the Constitution and Section 50 Cr. P.C. (now Section 47 of the Bharatiya Nagarik Suraksha Sanhita). This submission, however, is devoid of merit.

20.1.2. Article 22(1) of the Constitution mandates that “no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice”. Similarly, Section 50 (1) Cr. P.C.requires that “every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

20.1.3. The constitutional and statutory framework thus mandates that the arrested person must be informed of the grounds of arrest - but neither provision prescribes a specific form or insists upon written communication in every case. Judicial precedents have clarified that substantial compliance with these requirements is sufficient, unless demonstrable prejudice is shown.

20.1.4. In *Vihaan Kumar v. State of Haryana*²², it was reiterated that Article 22(1) is satisfied if the accused is made aware of the arrest grounds in substance, even if not

conveyed in writing. Similarly, in *Kasireddy Upender Reddy v. State of Andhra Pradesh*²³, it was observed that when arrest is made pursuant a warrant, reading out the warrant amounts to sufficient compliance. Both these post- Pankaj Bansal decisions clarify that written, individualised grounds are not an inflexible requirement in all circumstances.

20.1.5. While Section 50 Cr. P.C. is mandatory, the consistent judicial approach has been to adopt a prejudice-oriented test when examining alleged procedural lapses. The mere absence of written grounds does not ipso facto render the arrest illegal, unless it results in demonstrable prejudice or denial of a fair opportunity to defend.

20.1.6. The High Court, however, relied heavily on the alleged procedural lapse as a determinative factor while overlooking the gravity of the offence under Section 302 IPC and the existence of a prima facie case. It noted, inter alia, that there was no mention in the reman orders about service of memo of grounds of arrest (para 45); the arrest memos were allegedly template-based and not personalised (para 50); and eyewitnesses had not stated that they were present at the time of arrest or had signed the memos (para 48). Relying on *Pankaj Bansal v. Union of India*²⁴ and *Prabir Purkayastha v. State (NCT of Delhi)* (supra), it concluded (paras 43, 49 - 50) that from 03.10.2023 onwards, failure to serve detailed, written, and

individualised grounds of arrest immediately after arrest was a violation entitling the accused to bail.

20.1.7. In the present case, the arrest memos and remand records clearly reflect that the respondents were aware of the reasons for their arrest. They were legally represented from the outset and applied for bail shortly after arrest, evidencing an immediate and informed understanding of the accusations. No material has been placed on record to establish that any prejudice was caused due to the alleged procedural lapse. In the absence of demonstrable prejudice, such as irregularity is, at best, a curable defect and cannot, by itself, warrant release on bail. As reiterated above, the High Court treated it as a determinative factor while overlooking the gravity of the charge under Section 302 IPC and the existence of a prima facie case. Its reliance on Pankaj Bansal and Prabir Purkayastha is misplaced, as those decisions turned on materially different facts and statutory contexts. The approach adopted here is inconsistent with the settled principle that procedural lapses in furnishing grounds of arrest, absent prejudice, do not ipso facto render custody illegal or entitle the accused to bail.”

21. In the present case, the case diary produced by Ms. Bajoria clearly notes that the grounds of arrest were communicated to the Applicant at the time of his arrest, *albeit* it is admitted by Ms. Bajoria on instructions, that the grounds

of arrest were not given in writing to the Applicant. However, the noting in the case diary indicates that the Applicant was keeping out of the way to avoid arrest and he was ultimately found in the Chembur (North) Railway Station. The case diary also shows that the Applicant's father namely Motiram Borde was intimated of his arrest. The remand report also indicates that the grounds of arrest were conveyed to the Magistrate concerned. Thus, there is no breach of the statutory provision of Section 50 of the Cr. P. C, as interpreted by the Supreme Court in its various decisions. Most importantly, the Applicant has never raised a breach of noncompliance of Section 50 of the Cr. P. C. in his bail application before the Sessions Court. In any case, the remand report and the case diary clearly reflect that the Applicant was aware of the reasons of his arrest. Possibly that was the reason as to why he was keeping away to avoid arrest. There is no prejudice demonstrated to have been caused to the Applicant on account of not receiving the grounds of arrest in writing.

22. Ms. Bajoria raised an objection that the Applicant has alleged noncompliance of Section 50 of Cr. P. C. for the very first time in his arguments. She submitted that no such ground is taken by the Applicant in his bail application, neither before the Sessions Court nor before this Court. In these circumstances, this Court, by its order dated 11th August 2025 had granted leave to amend the application to add averments regarding grounds of arrest. Surprisingly, the Applicant has failed to carry out the said amendment till date. Be that as it may, I have considered and dealt with the objection of the Applicant alleging noncompliance of requirement of Section 50 of the Cr. P. C. In the light of the above, in my opinion, the grounds of arrest were in fact made expressly known to the Applicant and he availed a fair opportunity to oppose the remand application and canvassed his bail application before the Sessions Court. Thus, there is no violation of Article 22(1) of the Constitution of India.

23. The Applicant is in custody since 20th February 2024. The *roznama* of the Trial Court clearly shows that the Applicant has refused to cooperate with the framing of charges. It is the Applicant himself who is attempting to delay the trial. There is no prolonged incarceration of the Applicant. Accordingly, the seriousness of the charges, the antecedents pertaining to a similar offence and, the Applicant's conduct in the Trial Court make him unfit for bail.

24. In view of the aforesaid discussion, the bail application is rejected.

(Dr. Neela Gokhale, J)