



Sonam

**IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL APPLICATION (BAIL) NO. 4 OF 2024**

Mr. Vijay Parmar,  
S/o Mr. Shanu Parmar,  
Age 44 years,  
R/o. C/002, Sheetal Paradise,  
Sheetal Nagar,  
Opp. Cosmopolitan School,  
Mira Road East, Thane,  
Maharashtra-401107,  
Presently lodged at the Central Jail Colvale. ... APPLICANT

**Versus**

1. State  
Through P.I.,  
Panaji Police Station,  
Panaji, Goa.
  2. The Public Prosecutor,  
Porvorim, Goa.
  3. SXXXXXX XXXXXX,  
R/o 172, near Rolling Mill,  
Vathadev, Sarvan, Bicholim-Goa.
- } Amended as per order  
dated 30.07.2024  
...RESPONDENTS

Mr. Kamlakant Poulekar, Advocate for the Applicant.

Mr. Somnath Karpe, Additional Public Prosecutor for Respondent Nos. 1 and 2.

Ms. Prachi Sawant, Advocate for Respondent No.3.

**CORAM: BHARAT P. DESHPANDE, J.  
RESERVED ON : 26<sup>th</sup> AUGUST, 2024**

**PRONOUNCED ON: 29<sup>th</sup> AUGUST, 2024.**

**ORDER**

1. Heard Mr. Poulekar, learned Counsel for the Applicant, Mr. Karpe, learned Additional Public Prosecutor for Respondent Nos. 1 and 2 and Ms. Sawant, learned Advocate for Respondent No.3.
2. This is an application for regular bail under Section 439 of Cr.P.C.
3. Mr. Poulekar would submit that the Applicant was arrested on 16.12.2023 and since then he is in Judicial Custody. The chargesheet is filed disclosing 27 witnesses to be examined. He would submit that there are serious discrepancies in the statement of the victim herself first recorded by the police under Section 161 of the Cr.P.C. and then recorded before the learned Magistrate under Section 146 of Cr.P.C. He would further submit that the DNA report exonerate the Applicant and thus, there is serious cloud of the involvement of the Applicant in the alleged offence.

4. Mr. Poulekar would submit that since the chargesheet is already filed and the matter is posted before the concerned Court, it would take sufficient time to examine 27 witnesses and therefore, the Applicant is entitled for bail even on conditions.

5. Per contra, Mr. Karpe, learned Additional Public Prosecutor would submit that even though, the report of DNA is not supporting the prosecution, it would be in corroboration itself to primary evidence, however, main evidence is that of statements of the victim. He would submit that in such matters, even uncorroborated testimony of the victim is sufficient enough to hold the accused guilty.

6. Mr. Poulekar placed reliance on following decisions:

1. ***Manoj Sitam Verma V/s State of Maharashtra in BA 3788 of 2021.***

2. ***Kuldeep Kumar V/s State of NCT in BA 1778 of 2023.***

**3. *Shivam Patel V/s State of Madhya Pradesh in***

***Misc. Cr. Case 15520 of 2024.***

**4. *Manish Sisodia V/s Directorate of***

***Enforcement in SLP (Crim) No. 8772 of 2024.***

**5. *Jalaluddin Khan V/s Union of India [Crim.***

***Appeal No. 3173 of 2024.***

7. Mr. Karpe placed reliance on the following decisions:

**1. *Sunil V/s State of Madhya Pradesh, (2017) 4***

***Supreme Court Cases 393.***

**2. *Abbas Asmat Ali V/s State of Maharashtra and***

***anr., 2022 SCC OnLine Bom 3388.***

**3. *Kisan V/s State of Maharashtra through***

***Parner Police Station and anr., 2024 SCC OnLine***

***Bom 1823.***

8. Applicant was placed under arrest on 16.12.2023 itself

i.e. day on which FIR was registered. The chargesheet is

filed before the concerned Court wherein 27 witnesses are

shown which are required to be examined during trial. The

complaint was lodged on 16.12.2023 by the mother of the victim stating therein that alleged incident of rape took place somewhere on 08.11.2023. Statement of the victim is recorded by the police under Section 161 of the Cr.P.C. wherein, she disclosed that she started working in the month of October, 2023 in the house of one lady who was staying at Dona Paula. She then disclosed that the Accused who is working as a Broker was assisting the said lady and used to come to the house of the said lady. During that time Accused became friendly with the victim and assured her that he will teach her to operate Computer and accordingly, they became friends. She then claimed that somewhere on 08.11.2023 Accused took her in his car to the Dona Paula and committed rape on her in the said car. Statement recorded under Section 161 of the Cr.P.C would clearly show corrections made/overwriting with regard to the date of the alleged incident and it appears that incident of 08.11.2023, it is changed to 08.12.2023.

9. Statement of the victim was recorded before the learned Magistrate under Section 164 of the Cr.P.C wherein victim claim that incident took place on 8<sup>th</sup> October, 2023 i.e. 08.10.2023 when the Accused committed rape on her in his car.

10. Apart from above two statements, the DNA report would clearly show that same is not matching with the Accused.

11. There is no doubt that the DNA report which is to be considered as corroborating piece of evidence which cannot by itself prove the aspect of rape or otherwise. Primary evidence is that of victim herself. Therefore, at this stage, it is not necessary for this Court to consider whether the DNA report is favourable or not as such report is admittedly corroborative piece of evidence. It could be used only if the primary evidence suggests that victim was subjected to rape. Thus, it is not necessary for discussing the decisions

cited by the Learned Advocates as to whether DNA test could be considered for granting or refusal of the bail.

12. In the case of ***Manish Sisodia*** (Supra) Apex Court recently on 13.08.2024 has observed that the principle that the “Bail is Rule and Jail is Exception” needs to be kept in mind. Apex Court further observed that the trial will take some time to conclude which will have to be kept in mind for the grant or rejection of bail and the Accused cannot be incarcerated due to delay of trial.

13. Matter in hand would clearly go to show that the chargesheet is already filed and the matter is now pending before the learned Trial Court for the purpose of framing of charge. The contention that the Accused May jump bail since, he is not native of Goa cannot be a ground for rejection of bail. The native address of the Accused is already disclosed in the application which the Investigating Officer has also noted in the chargesheet and more particularly in the paragraph No. 11. The address of the

Accused in Goa is also disclosed in the chargesheet. By putting condition such apprehension could be taken care of.

14. Material placed on record would go to show that the trial has not commenced and certainly it will take some time to complete the trial. In such circumstances, it would be fit case for granting of bail but, with conditions.

15. Application is accordingly, allowed. The Applicant shall be released on bail on furnishing Personal Bond of Rs 25,000/- (Rupees Twenty Five Thousand only) with one solvent surety in the like amount to the satisfaction of the learned Trial Court and on following conditions:

1. The Applicant shall not leave State of Goa without prior permission of the learned Sessions Court.
2. The Applicant shall furnish his address in Goa to the learned Trial Court within a period one week from date of his release.

3. The Applicant shall surrender his Passport, if any, before the Trial Court within 8 days after his release.
4. The Applicant shall not in any manner temper with the prosecution witnesses.
5. The Applicant shall attend the proceeding regularly before the Trial Court.
6. The Applicant shall not enter the village where the victim and her family reside.

**BHARAT P. DESHPANDE, J.**