

IN THE COURT OF SESSIONS, YAVATMAL

MHYA010011582023

**Session Case No.67/2023**

State Vs. Dinesh Borkar

Order Below Exh.26*(Passed on 19th May, 2026)*

This bail application is moved under section 483 of BNSS by the accused Dinesh Arun Borkar in Session Case No.67/2023 in relation to FIR No.23/2023 registered at P.S. Yavatmal City for the offence punishable under sections 376(1), 323 of the Indian Penal Code.

2] The succinct contention of the accused is that he was arrested on 19/01/2023 and since then has been in custody. Chargesheet was filed on 17/03/2023 and charges framed on 12/07/2023. His first bail application was rejected on merits on 05/07/2023 wherein prosecution was directed to take early steps. Second bail application filed on 22/05/2024 was rejected on 19/08/2024 since the allegation were grave and serious. The court in that order had observed that the matter would be expedite. In order dated 07/02/2026 Hon'ble Court had directed day to day hearing of matter. However, there is material change since then. This is because evidence was fixed from 04/03/2026 to 07/03/2026 and witness called. But there was no progress by prosecution. Thus the right to speedy trial of the accused is affected. The muddemal is not filed. The trial which could not commence will not complete in short time. Thus he deserves bail. He is ready to abide all condition. He has permanent residence within Yavatmal. Hence, application for relief laid *ante*.

3] Say of APP and I.O. was called. APP vide his say (Exh.27) has opposed the bail application. It is laid that bail application earlier moved by the accused had been rejected. It is submitted that nature of offence is serious. The accused has committed offence against his own grand mother. The matter is already fixed for evidence. There is no change in circumstance. There is progress in the matter. If enlarged the accused might tamper with witness.

4] I.O. vide his say Exh.28 has opposed the bail application on the ground that accused has committed serious crime against his own grand mother 85 years old. He has criminal antecedent and was convicted for offence u/s 354 in RCC no.409/2013 on 17/05/2014. The accused is habituated to committing similar offence which has created fear in the minds of women in village. If enlarged there will be reoccurrence of incident. He might tamper with evidence. He would have no regard for law.

5] The defence-counsel argued that every time bail had been rejected it was observed in order that the matter could be taken up expeditiously. He pointed out that even though court had fixed date for evidence being taken day to day in last order rejecting bail of April 2026 there is no effective progress on part of prosecution which goes to show that matter will not complete in near future which entitles the accused in custody since 19/01/2023 for bail.

6] No argument was advanced by the prosecution side whereby their say is considered for adjudication.

7] *Prima facie* involvement, nature, gravity of charge, position and standing of the accused, propensity to flee also severity of punishment are some of the important factors to be taken into account while exercising discretion for bail. Nevertheless, these are not exhaustive. While exercising discretion in considering question of grant or refusal of bail, besides factors laid above the Court must also give regard to the principle of "Bail is a rule and jail in an exception". *Albeit* when it would apply is a question of fact since no inexorable formula can be applied for the same.

8] The prosecution through its say has contested that the application is not tenable since earlier application were rejected. This is traversed by defence by pointing out that there is lucid change in circumstances. In this regard it is no longer *res integra* that change in circumstance do entitle the accused to apply for bail and there is no absolute bar against the same. Hence, the application is found tenable for consideration.

9] The defence prayed for bail on the ground that matter is fabricated. The prosecution in its say has combated that charge-sheet shows otherwise. In this regard it is pertinent to note that false embroilment and *mens rea* involved are question of fact and law. At this tier the merits of the case which can be deliberated upon only during trial cannot be cogitated upon. It is only on the touchstone of examination and cross-examination that versions can be scrutinized. Factors needs to be considered only to the limited extent of considering the application in hand.

10] Prosecution through their say (Exh.27 & 28) apprehend that the accused on being released would tamper with evidence. In

this regard it needs to be taken into account that after registration of crime investigation has been carried out. Spot panchanama has been done. Sample have been collected and seizure panchanama has been carried out. Clothes of victim have been seized. Her medical examination has been done. Seized articles have been forwarded for chemical analysis to laboratory at Amravati. Statement by police and under section 164 Cr.P.C. have been recorded. With pivotal part of investigation having concluded the chances of the accused tampering with evidence are found sporadic.

11] The prosecution has contested that the accused does not deserve bail since the section invoked pertain to sexual assault and he has even been convicted u/s 354 of IPC earlier which makes this subsequent offence severe. It is relevant to note that it has been observed by Hon'ble Apex court that however serious a crime may be the Court needs to take into account that applicant is an accused not a convict. It held that it is postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty. As per copy of earlier judgment part of record it is seen that the same was passed in 2014 i.e. 12 years ago. No continuous trail since then has been shown by prosecution.

12] Moreover, in addition to above referred facts and circumstances, the substratum of stage of investigation also needs to be taken into account. Charge-sheet is filed. The investigation is complete. No recovery or discovery at the instance of the accused is shown to be pending in say (Exh.27 & 28)as would require his further physical custody. As has been held by Hon'ble Apex Court in catena of judgments any accused is to be kept in extended detention

only when the same is imperative under factual matrix of the case. However, the stage of matter does not make it perspicuous in the instant case. There is shown no reason for liberty of the accused to be curtailed considering the stage.

13] The prosecution has opposed release expressing apprehension of re-occurrence of crime. It is laid that conviction in earlier crime shows that the possibility of re-occurrence is strong. However, mere apprehension cannot stampede the Court into complacent refusal from considering bail application. This is because it is no longer *res- integra* that the object of bail is to secure the presence of accused person at trial. The object is neither punitive nor preventive. The test to be applied is whether the presence can be secured at trial.

14] The prosecution has combated that after being enlarged the accused might pressurize and endanger the life of victim and witnesses. The accused has submitted that he is ready to abide all condition. The witnesses as well as informant are member of his own family. This relationship *per se* has not stalled them from taking action against him. Thus it is evident that there is no pressurizing on his part of such extent as will render them in fear. In any case that solus cannot be the ground to reject bail and all factors have to be considered in entirety.

15] It is relevant to note that presently even though the above points are agitated by the prosecution in their say the defence has prayed for bail on the sole ground of long incarceration and no progress in trial from the side of prosecution inspite of order. Perusal of record goes to show that in each order rejecting bail specific

directions were given to prosecution to proceed with the matter expeditiously since the accused involved is an under trial prisoner since 19/01/2023. However, it is perspicuous that there is no effective progress neither have witnesses been examined. In spite of order below Exh.1 in this regard on 10/04/2026 there is seen no progress in recording of evidence. The prosecution through their say has not shown that the accused is responsible for the same. As such the above matrix makes the accused entitled to moving application on the basis of change in circumstance which are evident in view of discussion above.

16] There are elicited no exceptional factors which manifest likelihood of the accused interfering, polluting, thwarting the process of trial so as to raise exception to the above given object. His release is not apparent to prejudice the prosecution case. Moreover, apprehension of absconsion, evasion, repetition or pressurizing can be addressed by imposing conditions. In view of above discussion the application deserves to be countenanced.

17] Before saying omega it is clarified that any observation made herein-above are not to be construed to be reflection on the merits of the case and shall remain confined to disposal of this application alone. Ergo, I ordain as follows.

ORDER

1. The application is allowed.
2. Accused Dinesh Arun Borkar in connection with Crime No.138/2023 registered at P.S. Yavatmal for the offence punishable under sections 376(1), 323 of Indian Penal Code, be released on P.R.

of Rs. 75,000/- (Seventy Five Thousand Only) with one surety in the like amount, on following terms and conditions:

Conditions :-

- (i) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court.
- (ii) He shall attend each and every date of trial, failing which it shall be a ground for cancellation of bail.
- (iii) The accused not to indulge in any illegal activities or in committing the offence of like nature.
- (iv) He shall not enter into the vicinity of Patipura, District Yavatmal till the culmination of the trial.
- (v) He shall furnish verified copy of his Aadhaar Cards and Address Proof, tender cellphone number(s) and update IO of where he intending to reside after released on bail.
- (vi) His surety shall produce verified copy of his/her Aadhaar Card, contact details, copy of Bank Pass-book and other address proofs.

Date : 19/05/2026.

(S.R.Sharma)
Additional Sessions Judge,
Yavatmal