



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 473 OF 2026
WITH
CRIMINAL APPLICATION NO. 1520 OF 2026
IN BA/473/2026

Balaji Chintamani Kakde
Age : 21 years, Occu. : Labour,
R/o. Ektuni, Tq. Paithan,
Dist. Chh. Sambhajinagar

.... Applicant

Versus

1. The State of Maharashtra

2. X.Y.Z.

... Respondents

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Advocate for Applicant : Mr. Gautam J. Pahilwan

APP for Respondent - State : Mr. D. J. Patil

Advocate for Applicant in APPLN/1520/2026 (Asstt. To APP) : Mr.
Swapnil Patunkar i/b. M/s. J. P. Legal Associates

Advocate for Respondent No.2 : Ms. Neha Udawant (Appointed)

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CORAM : HITEN S. VENEGAVKAR, J.

RESERVED ON : 9th SEPTEMBER 2026

PRONOUNCED ON : 11th SEPTEMBER, 2026

ORDER :

1. This is an application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking regular bail in Crime No. 297 of 2025 registered with Pachod Police Station, Taluka Paithan, District Chhatrapati Sambhajinagar, for offences punishable under Sections 333, 74, 107, 352, 351(2) read with

Section 3(5) of the Bharatiya Nyaya Sanhita, 2023 and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012. The applicant, aged about 21 years, was arrested on 22nd July 2025. The charge-sheet was filed on 16th September 2025. The prayer is that he be released on bail pending trial.

2. The prosecution case, stated briefly, is that on 18th July 2025 at about 2.30 p.m. the 17 year old daughter of the informant was alone in the family house while the other family members were at their agricultural field. Rohit, the informant's nephew, states that on hearing her cries he entered the house and saw the applicant holding the child's hand and covering her mouth. When questioned, the applicant allegedly pushed him and escaped through the rear kitchen door. Sachin, who arrived there, states that he saw the applicant fleeing from that door and found the child crying.

3. The child is stated to have immediately told Rohit, Sachin and, shortly thereafter, her father that the applicant had entered the house through the rear door, forcibly caught her hand with an improper intention and covered her mouth. Her father then sent her with a relative to the field where her mother was present. The mother states that, a little later, she noticed the child

running towards a nearby well, followed her and saw her jump into it. The child was removed from the well and taken first to the hospital at Pachod and thereafter to the Government Medical College and Hospital, where she was declared dead. The provisional post-mortem opinion records death due to drowning. An accidental-death inquiry was registered on the same day. The FIR came to be lodged on 21st July 2025 after the funeral.

4. Learned counsel for the applicant submits that the applicant is a young labourer with no criminal antecedents; investigation is complete; nothing remains to be recovered; and his further custody is unnecessary. It is urged that the FIR was lodged after three days, that there is no suicide note or express act of instigation, and that death by drowning by itself does not establish the offence under Section 107 of the BNS. The statements are said to be those of interested witnesses. Reliance is also placed on WhatsApp and Snapchat communications to suggest that the applicant and the child were acquainted and that the applicant has been falsely implicated. Continued detention for more than one year, it is submitted, would amount to pre-trial punishment.

5. Learned APP, supported by learned counsel appearing for respondent No. 2, opposes the application. It is submitted that

the victim was a child; the applicant entered her house when she was alone; Rohit is an eyewitness to the act and Sachin saw the applicant immediately fleeing; the child made an immediate disclosure; and within a short time she jumped into the well in the presence of her mother. According to the prosecution, this constitutes a close and live link between the alleged act and the suicide. It is further submitted that prior acquaintance or electronic conversation cannot confer consent to a forcible act or justify entry into the house. Having regard to the gravity of the accusations and the applicant being a neighbour from the same village, the prosecution apprehends pressure upon material witnesses if he is released.

6. The settled position is that abetment of suicide cannot be inferred merely because suicide followed an unpleasant or wrongful act. The prosecution must ultimately establish abetment as defined by Section 45 of the BNS, including the requisite intention, a positive act of instigation, conspiracy or intentional aid, and a proximate and live link with the suicide. In *Balaji Jaiswal v. State of Chhattisgarh and another* reported in **2026 SCC OnLine SC 602 : 2026 INSC 375**, the Supreme Court reiterated that generalized harassment, without clear mens rea, a positive act and proximity, is insufficient. That principle must be kept firmly in

view even though the present application concerns bail and not the final determination of guilt.

7. Equally, the Court at the stage of bail is not to conduct a mini-trial or test the admissibility of every piece of prosecution material as at the final hearing, or return concluded findings on disputed facts. In *State of Uttar Pradesh v. Anurudh and another* reported in *2026 SCC OnLine SC 40 : 2026 INSC 47*, the Supreme Court has reiterated that the bail Court considers the prima facie material, the seriousness of the accusation, and the risks of absconding, tampering with evidence or influencing witnesses. The assessment which follows is therefore tentative and confined to the present application.

8. The school record collected during investigation records the child's date of birth as 17th February 2008. *Prima facie*, therefore, she was below 18 years on the date of the incident. There is no material presently shown which displaces that record. The POCSO accusations must consequently be considered on the footing that the victim was a child, leaving the formal proof and any permissible challenge to her age to the trial.

9. The case is not founded only on vague allegations of

earlier harassment. Rohit's statement attributes him to direct perception of the applicant holding the child's hand and covering her mouth inside the house. Sachin speaks of seeing the applicant flee and of the child's immediate condition. The father speaks of the child's disclosure made almost immediately, and the mother speaks of seeing her run towards the well and jump. These statements, read together with the provisional opinion of death due to drowning, constitute a continuous and closely proximate chain for the limited purpose of bail. Their truthfulness and evidentiary value will be tested at trial, but they cannot presently be discarded.

10. In case of *Balaji Jaiswal (supra)*, in which the allegations did not disclose the necessary direct and proximate incitement. The material alleged here is materially different at the prima facie stage. As deliberate forcible act against a child in the privacy of her home is followed, within a short interval and after an immediate disclosure, by the child running to the well and jumping into it. Whether the applicant possessed the precise *mens rea* necessary for Section 107 of the BNS and whether every ingredient is proved beyond reasonable doubt remain questions for trial. On the present material, however, it would be unsafe to hold at the bail stage that a positive act or a live and proximate link is altogether absent.

11. The electronic chats relied upon by the defence do not presently form part of the prosecution charge-sheet. Their authorship, completeness, context and authenticity cannot be adjudicated in bail jurisdiction. Even if prior acquaintance is assumed only for considering the submission, it does not by itself establish consent to the specific act alleged by the eyewitness, much less furnish a right to enter the house and use force upon a child. The defence is at liberty to prove this material in accordance with law at the trial.

12. The delay in lodging the FIR is not, at this stage, sufficient to discredit the prosecution case. The accidental-death entry was made on 18th July 2025 and the FIR explains that the father was not in a condition to lodge the report until after the funeral. The final post-mortem report and forensic reports are not part of the paper-book placed before this Court; however, the provisional report records drowning and the mother and rescue witnesses speak to the occurrence. The effect of any omitted or subsequently produced medical or forensic material is for the trial Court. Its absence from this bail paper-book does not efface the eyewitness and contemporaneous material already referred to.

13. The applicant's age, absence of antecedents, completion

of investigation and prolonged custody are substantial considerations in his favor. They have been weighed against the nature of the accusation, the direct prima facie material, the very short temporal interval between the alleged act and the suicide, and the fact that the principal witnesses and the applicant are from the same locality. At this stage, the latter considerations outweigh the former. Appropriate protection against indefinite pre-trial incarceration can, however, be afforded by requiring the trial to proceed on priority and by preserving liberty to renew the request if the trial does not materially progress for reasons not attributable to the applicant.

14. In the result, the Bail Application is rejected.

15. The learned Special Court shall give priority to the trial and shall endeavour to record the evidence of Rohit, Sachin, the informant and the mother of the deceased within four months from receipt of this order, without granting unnecessary adjournments to either side. The applicant shall cooperate with the trial. If those material witnesses are not examined within that period for reasons not attributable to the applicant, he shall be at liberty to renew his application for bail, which shall be considered on its own merits and in the light of the progress then made.

16. All observations in this order are prima facie and confined to the decision of this bail application. The trial Court shall decide the case independently, on the evidence led before it, without being influenced by these observations.

17. Fees of learned Advocate appointed to represent the cause of respondent no.2 is quantified at Rs.10,000/- (Rupees Ten Thousand only) to be paid by High Court Legal Services Sub-Committee, Aurangabad.

18. In view of disposal of Bail Application, Criminal Application No. 1520 of 2026 is also disposed of.

(HITEN S. VENEGAVKAR)
JUDGE