

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1027 OF 2026

Shahid Sultan Gadhawal

.. Applicant

Versus

State of Maharashtra & Anr.

.. Respondents

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- Ms. Savvy Kolhekar a/w Mr. Aniket Vagal, Advocates for Applicant
- Ms. Rajeshree V. Newton, APP for State
- Ms. Aafreen S. Shaikh, Advocate (appointed) for Respondent No. 2

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 2, 2026

P. C.:

1. Heard Ms. Kolhekar, learned Advocate for Applicant; Ms. Newton, learned APP for State and Ms. Shaikh, learned Advocate (appointed) for Respondent No. 2.

2. This is an Application filed under Section 439 of the Code of Criminal Procedure, 1973 / 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Bail in connection with C.R. No. 675 of 2024 registered with Kondhawa Police Station, Pune for the offence punishable under Sections 376(2)(n) and 506 of the Indian Penal Code, 1860 (for short "**IPC**") and Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short "**POCSO Act**").

3. Applicant is accused in a POCSO case. Applicant is 19 years old. Date of registration of FIR is 11.6.2024. The date of the incident as

stated in the FIR by the first informant - prosecutrix is from 11.10.2023 to 25.2.2024. Age of the prosecutrix is 15 years (to be precise 14 years 10 months). Applicant is in incarceration for 2 years 2 months.

4. Learned APP has vehemently argued that considering the age of the prosecutrix, Applicant has taken undue advantage of her and not only outraged her modesty on several occasions but also assaulted her and therefore he does not deserve to be enlarged on bail.

5. Ms. Kolhekar, learned Advocate for Applicant would persuade me to consider the case of the prosecution on the basis of the FIR itself and contend that the Applicant and the prosecutrix were admittedly in a consensual relationship. She would submit that even according to the prosecution case and the statement of the mother of the prosecutrix appended at page 21, it is a fact that the involvement of the prosecutrix with the Applicant was completely known to her family four months prior to the filing of the FIR in the month of June 2024. She would submit that the mother of the prosecutrix has, in fact, personally stated in her statement that when she came to know about the relationship between the Applicant and the prosecutrix, she warned the Applicant against maintaining any relationship with the prosecutrix. She has also stated that she thereafter apprehended the Applicant and the prosecutrix together on two separate occasions.

5.1. She would also refer to the statement recorded under Section 164 by the prosecutrix, as also the statement recorded during her medico legal examination, copies of which are appended to the Application which *prima facie* show that the prosecutrix, though under the age of consent was fully aware of her actions in view of the fact that both of them knew each other very well since October 2023 and she on her own volition went out and met the Applicant outside her school and went out with him without informing her family. The prosecution case also refers to Instagram chats between the Applicant and the prosecutrix which is heavily relied upon by the Applicant's Advocate to persuade the Court to consider that the relationship between them was not forceful and violent and that both of them were in constant touch with each other.

5.2. She would also draw my attention to the Instagram ID which was created by the prosecutrix herself on the mobile phone of her own mother and how the same was kept hidden and under wraps from her mother. It is also argued that on the pretext of doing studies, the prosecutrix would borrow her mother's mobile phone which was a smartphone and indulge in chatting with the Applicant on Instagram. It is argued that the mother of the prosecutrix has stated in her statement that on several occasions she had apprehended the prosecutrix while chatting with the Applicant and when the first

informant checked her phone, she realized that the prosecutrix had deleted many of the chats. Hence, she would submit that in such circumstances, where it is prima facie evident that the relationship between the parties was consensual and there was no premeditation or motive or any violence or abuse between the parties, in view of the young age of the Applicant and the prosecutrix and their love relationship, the Applicant be enlarged on bail.

6. *Per contra*, Ms. Shaikh, learned appointed Advocate through the legal aid for Respondent no. 2 - prosecutrix would vehemently submit that the prosecutrix being a minor girl was a victim of circumstances and that the plea of the Applicant regarding consensual relationship is therefore untenable in law and should not be considered by the Court. She would vehemently submit that the Applicant has taken undue advantage of the young age of the prosecutrix by luring her repeatedly outside her school premises with the sole intention of outraging her modesty and engaging in a forceful relationship with her. She has drawn my attention to the medico legal examination of the prosecutrix and the statements recorded by the prosecution and argued that the Applicant had given a false promise of marrying the prosecutrix, gained her confidence and exploited her by carrying out repeated assault on her. She would submit that the Applicant has committed the offence with a premeditated notion and that if he is released on bail,

he is bound to pressurize the reoffend himself and prosecutrix and the witnesses and therefore, the present Application be dismissed.

7. Learned APP has echoed the submissions advanced by Ms. Shaikh on behalf of the Respondent No. 2 - prosecutrix which, for the sake of brevity, are not reproduced herein.

8. I have heard the submissions made by the learned Advocates at the bar and perused the pleadings. Submissions made by them have received due consideration of the Court.

9. I am conscious of the fact that the age of the prosecutrix was 14 years 10 months old at the time of the incident. According to the prosecution case, the incident is spread over a substantial period of time, namely between 11.10.2023 to 25.2.2024. However, it is seen that the FIR is registered only on 11.6.2024. The aforesaid timeline, therefore, *prima facie* appears to be such that the factual submissions and facts will have to be considered.

10. On perusing the various statements recorded by the prosecution including the statement of the prosecutrix herself and her Section 164 statement, it is *prima facie* seen that the prosecutrix was in love with the Applicant and she had voluntarily accompanied him to several places and on her own volition on several occasions and had a consensual relationship with him fully knowing well about the

consequences of the same. It is also *prima facie* seen from her own statements which are recorded that she was aware of the consequences of having unprotected encounter also. In none of the statements recorded it is the case of the prosecution and neither that of the prosecutrix that there was an element of any violence, force or abuse exercised by the Applicant.

11. What is intriguing is the fact that the prosecutrix never informed her family members about her meetings and her repeated going out on several occasions with the Applicant and most importantly, even according to the prosecution case, four months before the filing of the FIR, her family members had absolute knowledge about her meetings and relationship with the Applicant.

12. As held by this Court in the case of *Sunil Mahadev Patil Vs. State of Maharashtra*¹ it is true that a wrong doer is to be punished, guilty is to be convicted. However at the stage of bail, Court has to consider *prima facie* under what circumstances the offences are committed by the accused. The offence of rape can be distinguished on the basis of the intention of the accused. In the aforesaid judgment the learned Court summed up the ethos of relationship between young boys and girls aptly in paragraph No.11 of the said judgment which reads thus:-

¹ BA No.1036 of 2015 – Decided on 03.08.2015

“11. Today teenagers are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and a woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship. Sexual urge differs from person to person and there cannot be any mathematical formula in respect of sexual behavioral pattern of teenagers, as biologically whenever the child turns into puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all considered as a sexual maturation. Therefore, some sects with view to regularize sexual behaviour of the community have acknowledged this biological factor and therefore, the early age marriages are performed in some religions or communities. Taking into consideration this social and biological factors, the law makers have considered the age of 15 as a age of consent when the marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such cases.”

13. In view of my above *prima facie* observations borne out from the record, complicity of the prosecutrix and considering the age of the parties, I am of the opinion that in the above facts further incarceration of the Applicant in prison would amount to giving him punishment before conviction. Considering Applicant’s age of 19 years, if he is enlarged on bail, Court is hopeful that Applicant’s family will undoubtedly do their duty to make every effort and attempt to reform and aid the Applicant in leading a reformed life while on bail rather than keep him in prison and expose him to criminal outlook and life in prison.

14. However, if a chance is given to the Applicant because of his young age by enlarging him on bail, there is a possibility that he will

be remorseful and repent in retrospect. This is a chance required to be taken by the Court because punishment has to be believed to be inflicted for a reformatory result rather than being punitive in nature and that too on consideration of the facts of each case. Undoubtedly the trial will determine the punishment for the offence. While considering Bail Application in such facts, Court feels that reform and rehabilitation of the young under trial accused needs to be considered especially when age of the accused is young so that the accused gets an opportunity / or is given an opportunity to reform, rehabilitate and earn his livelihood honorably from the perspective of social integration. This is a chance which the Court must take considering the young age of accused. By considering this Court is not stamping approval of any of the actions of Applicant regarding the alleged crime in question. Court is also equally conscious of the offence. In the present case, ages of the Applicant and the prosecutrix are very young. If the Applicant is incarcerated in prison further, there is every possibility that he might lose faith in the institution and society at large and may tread the path of criminality or would waste his life. Incarceration in prison statistically shows that it exposes many youth to abuse. There are several harms of incarceration which are inflicted disproportionately on the youth. This is the reason why this Court feels that any / every semblance of a chance towards a reformatory

approach in punishment should be adopted, especially in the case of young offenders. Hence every opportunity or to that extent risk should be constructively taken by the Court in the case of young offenders – accused before committing such accused to further custody and give such accused an opportunity to become a good citizen in the Society. These observations are only in the view of the young age of the Applicant before me and it is only a means to explore an alternative to incarceration so that the Applicant can be at his home with his parents and the community which may have a positive impact on his mind.

15. The applicant has made out a strong case in the present facts and circumstances for consideration. It is also crucial to consider that the acts between the parties were never violent or forced and that the offender has no antecedents. Assistance for this is drawn from para Nos. 9 to 14 of a decision of this Court in the case of ***Sajid Mehendi Hasan Khan Vs. The State of Maharashtra and Anr.***² which is reproduced below for ease of reference:-

“9. In so far as offences punishable under Sections 4, 5, and 6 of POCSO Act (special law) are concerned, it may be stated that the provisions of this law are, though, stringent in nature, however it would not deter the Court to grant or refuse bail in order to secure the ends of justice more so when the trial has not commenced despite a long hiatus and the case has been pending trial before the trial Court for close to 5 years.

10. Assistance is drawn from the decision of the Supreme

2 Criminal Bail Application No.1101 of 2024 decided on 27th March 2025

Court in the case of **S. Varadarajan v. State of Madras**³ wherein the Court in paragraph No.2 has held thus:-

“2. Where a minor girl alleged to be taken away by the accused person, had left her father's protection knowing and having capacity to know the full import of what she was doing and voluntarily joined the accused, it could not be said that the accused had taken her away from the keeping of her lawful guardian within the meaning of section 361 of the Penal Code, 1860 (“IPC” for short). Something more had to be done in a case of that kind, such as an inducement held out by the accused person or an active participation by him in the formation of the intention either immediately prior to the minor leaving her father protection or at some earlier stage.”

11. Though the above referred case was decided well before the POCSO Act was enacted, this Court is well conscious of the presumption ingrained in Section 29 of the said Act and that argument on prosecutrix's consent is irrelevant but *prima facie* if the statements of prosecutrix recorded are read, it is clearly borne out that she has been consenting to the actions which is gathered from the record of the case.

12. In the facts of the present case, attention is drawn to the decision of this Court (Coram: Mridula Bhatkar, J.) in the case of **Sunil Mahadev Patil Vs. The State of Maharashtra**⁴ to contend that consensus of the prosecutrix who is below the age of 18 years is a mitigating circumstance for Trial Court to consider. In furtherance to the above, Court has laid down certain specific guidelines after taking into consideration relevant cases as also the ethos and development of the age of the young offenders in the Indian Society in general. Court in paragraph Nos.8, 9,11 and 12 has laid down certain principles which I find it apt to be reproduced herein below for consideration of bail in such Applications. Paragraph Nos.8, 9, 11 and 12 read thus:-

“8. It is to be noted that the case of S. Varadarajan was decided in the year 1967 when the women were not enjoying the freedom which today the women have. Albeit the Hon'ble Supreme Court then has taken a pragmatic view and has acquitted Varadarajan. Now we come across such cases everyday. If a girl is a minor between the age group of 15 to 18 years and if it can be safely inferred that her consent was obvious, then it is a mitigating circumstance. Some trial Courts dealing with such Bail Applications, especially after Nirbhaya case,

3 AIR 1965 942

4 Bail Application No. 1036 of 2015, decided on 03.08.2015.

started taking a strict approach and the accused are denied the bail only on the ground that the prosecutrix being minor below 18 years, her consent is immaterial, therefore, in the case of rape on such minor, no bail can be granted. This is a matter of concern.

9. In view of the increasing offences against the women especially of rape, the legislature and judiciary both found it obligatory to deal these offences with severe punishment and women can be protected if the laws are made rigorous. Therefore, report of Justice Verma Committee was accepted and necessary and significant amendments were made in these two sections. A wrong doer is to be punished, guilty is to be convicted. However, at the stage of bail, the Court has to consider prima facie under what circumstances the offence is committed by the accused. In the Criminal law, the Court cannot ignore the intention or motive behind the act and that is an important factor in the commission of offence so also to decide the quantum of sentence at the end of trial, so in the case of bail.

10. ...

11. Today teenagers are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and a woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship. Sexual urge differs from person to person and there cannot be any mathematical formula in respect of sexual behavioral pattern of teenagers, as biologically whenever the child turns into puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all considered as a sexual maturation. Therefore, some sects with view to regularize sexual behaviour of the community have acknowledged this biological factor and therefore, the early age marriages are performed in some religions or communities. Taking into consideration this social and biological factors, the law makers have considered the age of 15 as a age of consent when the marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such cases.

12. *The overall considerations while deciding such applications can be summed up as -*

When a boy and a minor girl are in love with each other and chose to live together without consent of their parents, then the following factors are to be considered:

- (i) What is the age of the prosecutrix, who is minor.*
- (ii) Whether the act is violent or not.*
- (iii) Whether there are antecedents or not.*
- (iv) Whether the offender is capable of repeating the Act or not.*
- (v) Whether there is likelihood of threats or intimidation, if at all the boy is released.*
- (vi) Whether any chance of tampering with the material witnesses when their statements are recorded.*
- (vii) It is also to be taken into account in such cases that a boy in his early 20's deserves to get employment and to plan, stabilize and secure his future.”*

13. *Next the decision of this Court (Coram: Sandeep K. Shinde, J.) in the case of **Anirudha Radheshyam Yadav Vs. The State of Maharashtra**⁵ is also relevant in the facts of the present case. Relevant paragraph No.4 is reproduced below for reference and reads thus:-*

“4. The conduct of the victim is indicative of the fact that she had left the home of her parents by her own will and that she had surrendered to the physical desires of the applicant out of her love and affection for him. It is not the case of the prosecution that the applicant had promised to marry her. Additionally, it is also not a case where under the misconception of the fact, she had served herself to the desire of the applicant for physical relations. No doubt, that the applicant, under the preview of POCSO Act, is a minor; however, the facts of the present case indicate that she had sufficient knowledge and capacity to know full import of what she was doing and had only thereafter voluntarily joined the complainant (applicant).”

14. *There is no doubt that presumption under Section 29 exists but it is not an absolute presumption. This Court is of the opinion that presumption would come into play only when*

⁵ Criminal Bail Application No.2632 of 2019 decided on 09.01.2020

prosecution is able to bring on record facts that would prima facie form the foundation for the presumption. Otherwise, all that the prosecution would be required to do is to raise some allegation against the accused person and claim that the case projected by it is true. Court will have to be on guard to see that application of presumption without adverting to the essential facts shall not lead to injustice since we are at a prima facie stage and trial has not even begun. The presumption under Section 29 of the POCSO Act is not absolute. Attention in this regard is invited to the decision of High Court of Kerala in the case of **Joy Vs. State of Kerela Represented through the Public Prosecutor**⁶ in a similar case where age of prosecutrix as below 18 years and a similar argument was made. The relevant paragraph Nos.9 to 11 are reproduced below:-

“9. Mere delay in reporting the matter to the authorities concerned, especially sexual assault on a minor girl, is immaterial and it would not be fatal to the prosecution case. However, in the instant case, it is not the delay alone that is significant. The significant fact is that the complaint was given to the authorities concerned only two weeks after the mother received the lawyer notice from the petitioner claiming a huge amount as professional fees. This raises suspicion on the prosecution case against the petitioner. When the victim had disclosed the matter to her mother in July, 2018, one would have expected the mother to report the matter to the authorities concerned much earlier than 22.09.2018. The fact that she reported the matter only after receiving a lawyer notice from the petitioner assumes significance.

10. This court is not oblivious to Section 29 of the Act which contains a legislative mandate that the court shall presume commission of the offences by the accused unless the contrary is proved. Section 29 of the Act states that where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and 9 of the Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. The court shall take into consideration the presumption under Section 29 of the Act while dealing with an application for bail filed by a person who is accused of the aforesaid offences under the Act (See State of Bihar v. Rajballav Prasad, (2017) 2 SCC 178 : AIR 2017 SC 630).

11. However, the statutory

6 2019 SCC OnLine 783.

presumption under Section 29 of the Act does not mean that the prosecution version has to be accepted as gospel truth in every case. The presumption does not mean that the court cannot take into consideration the special features of a particular case. Patent absurdities or inherent infirmities or improbabilities in the prosecution version may lead to an irresistible inference of falsehood in the prosecution case. The presumption would come into play only when the prosecution is able to bring on record facts that would form the foundation for the presumption. Otherwise, all that the prosecution would be required to do is to raise some allegations against the accused and to claim that the case projected by it is true. The courts must be on guard to see that the application of the presumption, without advertent to essential facts, shall not lead to any injustice. The presumption under Section 29 of the Act is not absolute. The statutory presumption would get activated or triggered only if the prosecution proves the essential basic facts. If the accused is able to create serious doubt on the veracity of the prosecution case or the accused brings on record materials which would render the prosecution version highly improbable, the presumption would get weakened. As held by the Apex Court in Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 : AIR 2011 SC 312, frivolity in prosecution should always be considered and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of anticipatory bail. No inflexible guidelines or straitjacket formula

can be provided for grant or refusal of anticipatory bail. It should necessarily depend on facts and circumstances of each case in consonance with the legislative intention.”

16. Hence, in view of the above facts and citations, in the present case, I am of the opinion that incarceration of the Applicant in prison considering his young age is likely to worsen his likelihood of success in every sphere of life and society and it will expose him to abuse. While granting bail in such facts there is a very thin line rather a faint line between punitive and reformatory approach and therefore in the facts of the present case delineated hereinabove, I am inclined to grant bail to the Applicant on the following terms:-

- (i) Applicant is directed to be immediately released from prison in connection with Crime No. 675 of 2024;
- (ii) Applicant is directed to be released on bail on furnishing PR. Bond of Rs. 10,000/- (Rs. Ten Thousand only) with one or two sureties in the like amount;
- (iii) Applicant is permitted to furnish provisional cash bail of Rs. 10,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs. 10,000/- within a period of four weeks after his release which shall be accepted by the Trial Court, Applicant shall provide surety as directed;

- (iv) Applicant shall report to the Investigating Officer at Kondhawa Police Station, once every month on the first Sunday of the month between 10:00 a.m. to 12:00 p.m.;
- (v) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates, unless specifically exempted and will not take any unnecessary adjournments, if he does so it will entitle the prosecution to apply for revocation of this order;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (viii) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable;
- (ix) Applicant shall not attempt to contact the prosecutrix either physically or by any electronic devices / means until the trial is completed and the verdict is delivered by the Trial Court; and
- (x) Any infraction of the conditions shall entail cancellation

of bail granted to the Applicant.

17. This Court appreciates the assistance rendered by Ms. Shaikh, learned Advocate appointed through the Legal Aid to espouse the cause of Respondent No. 2 (prosecutrix). Her fees be paid by the High Court Legal Aid Services Authority as per rules on production of a server copy of this order and other compliances in accordance with the decision of this Court in the case of *Sanjyot Nitin Telharkar v. The State of Maharashtra & Anr.*⁷ and the Schedule under Regulation 18(1) of the Maharashtra State Legal Services Authority Rules, 1998.

18. Needless to state that the above observations will not come in the way of trial as they are *prima facie* in nature based on the submissions made and the material placed before this Court.

19. Bail Application is allowed and disposed of in the above terms.

[MILIND N. JADHAV, J.]

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7 Judgment dated 25.09.2024 passed in Misc. Civil Application No. 134 of 2024