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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 3278 OF 2026

Ramesh Kaliyan Arjun

.. Applicant

Versus

State of Maharashtra and Anr.

.. Respondents

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- Mr. Yash Agarwal a/w. Mr. Abhishek Jare and Ms. Disha Rathod, Advocates i/by Mr. Vaibhav Kulkarni for Applicant.
- Ms. Shilpa G. Talhar, APP for Respondent No.1 – State.
- Ms. Srushti More, Advocate for Respondent No.2.
- Mr. S.V. Waghmare, PSI Dehu Road Police Station, Pune present.

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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 25, 2026.

P.C.:

1. Heard Mr. Agarwal, learned Advocate for Applicant; Ms. Talhar, learned APP for Respondent No.1 – State and Ms. More, learned Advocate for Respondent No.2.

2. Present Application seeks enlargement on bail of the Applicant, who is 21 years old. First Informant is the mother of Respondent No.2 – prosecutrix. Applicant is indicted in C.R. No.361 of 2025 registered with Dehu Road Police Station, Pune for the offences punishable under Sections 64(m) and 64(2)(m) of the Bharatiya Nyaya Sanhita, 2023 (for short '**BNS**') and Sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO Act**').

3. Applicant was arrested on 11.10.2025. Investigation has been completed and charge-sheet has been filed. Prosecutrix was 15 years old and Applicant was 21 years old at the time of alleged incident/s. Tenure of incident/s is alleged to be from May 2025 to October 2025. FIR is filed on 06.10.2025. Applicant is incarcerated since 11.10.2025 pending trial.

4. Mr. Agarwal, learned Advocate appearing on behalf of the Applicant would vehemently submit that even on the basis of the prosecution case, it would *prima facie* prove that the relationship between Applicant and prosecutrix was consensual in nature and there was no element of force or abuse whatsoever or to that extent coercion or duress exercised upon the prosecutrix by Applicant.

5. He would submit that statements made in the First Information Report (FIR), statements recorded by the prosecution and statements recorded in medical evidence/report *prima facie* suggest consensual relationship between both the parties. He would submit that confession of the prosecutrix herself in her own statements recorded by the prosecution without there being any element of deceit or violence, entitle the Applicant to be enlarged on bail in the facts of the present case. He would submit that Applicant has no antecedents and therefore being a young offender should be released on bail by this Court.

6. *PER CONTRA*, Ms. Talhar, learned APP for the State would vehemently oppose the Bail Application and contend that considering the age of the prosecutrix and she having been impregnated by the Applicant clearly makes out a case and offence within the meaning of POCSO Act and therefore the ground of consensual relationship should be rejected.

7. She would submit that the Applicant has taken undue advantage of the minor age of the prosecutrix/victim and lured her into physical relationship despite being well aware of the fact that she was a minor and therefore not having crossed the age of understanding has committed the offence knowingly. She would submit that at the *prima facie* stage complicity of the Applicant has been proved to have indulged in the overt acts knowingly and therefore urge the Court that the Application be dismissed and trial be expedited since there is every possibility that the Applicant will not only influence the witnesses, but will also harass and pressurize the prosecutrix and her family members.

8. Ms. More, learned Advocate for Respondent No.2, First Informant has however filed Affidavit dated 25.08.2026 in support of the present Application to which I will advert hereinafter in my observations.

9. I have heard the submissions made by both the sides and perused the record placed before me.

10. The FIR is appended at page No.17 of the Application. It is dated 06.10.2025. Statement of the First Informant/mother is appended at page No.13 whereas statement of the prosecutrix is appended at page No.15 of the Application. It states that the prosecutrix befriended the Applicant in the month of May 2025 and after he confessed his love for the prosecutrix by giving his details, the prosecutrix further states that she reciprocated his advances and proposal affirmatively after which they both went to Nigdi near Pune on his motorcycle for outing on 4 different occasions. The prosecutrix specifically states that she herself gave her consent to the proposal advanced and made by the Applicant after which they both started going out together.

11. Prosecutrix next states that in the last week of May, Applicant took her to his house situated in M.B. Camp, Dehu Road, Pune when no one was present at home, confessed his love for her and both of them indulged in physical relationship. Though insofar as this incident is concerned, prosecutrix states that it was committed against her consent, but she immediately states that thereafter on three occasions she and Applicant visited the same house and indulged in physical relationship.

12. In the Medico-Legal Examination Report which is narrated by the prosecutrix to Sassoon General Hospital on 07.10.2025, copy of which is appended at page No.39 onwards, prosecutrix has recorded her statement wherein she states that she befriended the Applicant on her daily route to Shankar Mandir near Mahatma Gandhi School and met him at a park near her school. She has stated that they both have been in a relationship since then. What is important is that the prosecutrix herself states that Applicant had consensual physical relationship with her at his house on 05.06.2025 followed by multiple similar episodes thereafter. That apart, Medico-Legal Examination Report completely rules out any violence or abuse and physical injury altogether.

13. After perusing the aforesaid statements, though this Court is completely conscious of the fact that the prosecutrix was 15 years old, but such statements given by her to the prosecution and during her Medico-Legal Examination *prima facie* show that she was completely aware of the repeated acts committed by the Applicant and the prosecutrix and more importantly what the result of such acts would ultimately be.

14. Therefore even according to the prosecutrix's own statement wherein she has admitted to being in a consensual relationship, this Court has taken into consideration the fact that the Applicant was 21

years old while considering the present Application for grant of bail. Applicant has been incarcerated since 11.10.2025.

15. What is intriguing is that on the date of hearing of the present Bail Application, Respondent No.2 – the First Informant has filed an Affidavit dated 25.08.2026 wherein she has stated that Applicant and First Informant's family have decided to settle the issue as the Applicant has undertaken to marry the prosecutrix once she attains the age of majority. In the said Affidavit, First Informant has stated that the present case was a case of love affair between the victim and Applicant and there is no coercion, threat, undue influence or pressure of any kind either from the Applicant or his family on the First Informant and the prosecutrix.

16. Having considered the above and the fact that admittedly there was a consensual relationship between the Applicant and prosecutrix the Applicant has made out a case for grant of bail.

17. In this regard, assistance is drawn from the decision of the Supreme Court in the case of *S. Varadarajan v. State of Madras*¹ 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

¹ AIR 1965 942

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."

18. 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 which are 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.

19. 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***² to contend that consensus of the prosecutrix who is below the age of 18 years is a mitigating circumstance for a 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 hereinbelow for consideration of bail in such Applications. Paragraph Nos.8, 9, 11 and 12 read thus:-

² Bail Application No. 1036 of 2015, decided on 03.08.2015.

“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, 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."*

20. Next the decision of this Court (Coram: Sandeep K. Shinde, J.) in the case of ***Anirudha Radheshyam Yadav Vs. The State of Maharashtra***³ 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)."

21. 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 prosecution is able to

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

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***⁴ in a similar case where age of prosecutrix was 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

4 2019 SCC OnLine 783.

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 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 adverting 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.”

22. Considering Applicant’s age, if he is enlarged on bail the 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 them in prison and expose him to criminal outlook and life in prison. However on the flip side, if a chance is given to 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.

23. Undoubtedly the trial will determine the complicity of Applicant in the offence. While considering Bail Application in such facts, Court feels that reform and rehabilitation of the under trial accused needs to be considered especially when age of the accused person is young so that the accused person 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 person. The age of Applicant is 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 incidentally exposes many youth to abuse as is shown statistically.

24. There are several harms of incarceration which are inflicted disproportionately on the youth. This is the reason why 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 become a good citizen.

25. 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.

26. In so far as present case is concerned, it is *prima facie* borne out from the record that prosecutrix was 15 years old whereas Applicant was 21 years old, that she repeatedly went out with Applicant on her own volition and indulged in physical relationship on multiple occasions without ever intimating her parents that she was going out with Applicant, that she has confessed her love relationship with Applicant, that her own endorsement is that she was in love with the Applicant and that there was no force or violence or deceit practiced on her, are facts required to be considered. Facts of the present case indicate that prosecutrix though not a major had sufficient knowledge and capacity to know the full import of what she was doing

and had only thereafter voluntarily joined the Applicant on multiple occasions.

27. Hence, in view of above *prima facie* observations and finding, Bail Application of Applicant is allowed subject to the following terms and conditions:-

- (i) Applicant – Ramesh Kaliyan Arjun is directed to be immediately released from prison in connection with CR. No.361 of 2025;
- (ii) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs.20,000/- (Rs. Twenty Thousand only) with one surety of the like amount;
- (iii) Applicant shall report to the Investigating Officer at Dehu Road Police Station, once every month, on the first Monday of the month between 10:00 a.m. to 12:00 p.m. until commencement of trial and thereafter shall attend all dates of hearing before the Trial Court;
- (iv) Applicant shall cooperate with the conduct of the trial and remain present before the Trial Court on all dates, unless specifically exempted. Applicant shall not seek unnecessary adjournments. Any such conduct shall entitle the prosecution to apply for cancellation of bail;
- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vi) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;

(vii) Applicant shall keep the Investigating Officer informed of their current residential address and mobile telephone number and shall forthwith inform the Investigating Officer of any change in their residential address or mobile telephone number, as and when such change occurs; and

(viii) Any breach or infraction of any of the aforesaid conditions shall entail cancellation of the bail granted to the Applicant.

28. It is clarified that the observations made in this order are limited for the purpose of granting bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made hereinabove in this order.

29. Bail Application is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

Ajay

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