

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3308 OF 2026

Shaidul Akbarali Mir

.. Applicant

Versus

State of Maharashtra and Another

.. Respondents

.....

- Mr. Satyavrat Joshi a/w. Mr.Nawaz Dordi, Advocates for Applicant.
- Mr. Sukanta Karmakar, APP for Respondent – State.
- Ms. Priyanka Chavan, Advocate for Respondent No.2.
- Mr. S.S.Gore, API – Dehuroad Police Station.

.....

CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 28, 2026

P.C.:

1. Heard Mr. Joshi, learned Advocate for Applicant, Mr. Karmakar, learned APP for Respondent – State and Ms. Chavan, learned Advocate for Respondent No.2.

2. This is an Application under Section 439 of the Criminal Procedure Code, 1973 seeking bail in connection with C.R.No.640 of 2023 registered with Dehuroad Police Station, Pune for the offences punishable under Sections 363, 365, 366A, 370, 376(2) of the Indian Penal Code, 1860 read with Sections 4 and 8 of Protection of Children from Sexual Offences Act, 2012 read with Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956.

3. There are a total of three (3) accused persons in the present case. Applicant before me is arraigned as Accused No.1. Applicant is

arrested on 23.05.2027 and is incarcerated for the past 2 years 4 months. It is prosecution case that Applicant developed a love relationship with prosecutrix and in and around October, 2023 under the pretext of marriage took her away from her house. Pursuant to which Applicant and prosecutrix stayed together at Applicant's friend's house in Pune for a few days where they developed physical relations. It is prosecution case that Applicant threatened prosecutrix to maintain physical relations. Further, it is prosecution case that Applicant forced prosecutrix into prostitution by compelling her to maintain physical relations with people sent by Accused No.2 and the monies received from those activities were sent to Applicant. Hence, prosecutrix narrated this incident to one Zeba Shaikh who then narrated the said occurrence to prosecutrix's mother. It is prosecution case that prosecutrix's parents visited Applicant's house from where he was brought to the police station. FIR was lodged against Applicant for the offences punishable under Indian Penal Code, 1860, Protection of Children from Sexual Offences Act, 2012 and Immoral Traffic (Prevention) Act, 1956.

4. Mr. Joshi, learned Advocate appearing for Applicant would submit that Applicant has been falsely implicated in the present crime and the allegations levelled against him are baseless, ambiguous and a complete afterthought, particularly when the FIR was initially

registered against unknown persons and Applicant was not named therein. He would submit that there are material discrepancies in the statements subsequently made by prosecutrix before the Investigating Agency which cast serious doubt upon the veracity of the allegations. He would submit that even as per the statement of the Complainant and his wife, prosecutrix had allegedly informed them about her whereabouts as early as in April 2024, yet no steps were taken to bring the same to the notice of the Investigating Agency, thereby raising a serious question regarding the subsequent implication of Applicant. He would submit that the unexplained and inordinate delay in disclosing the incidents and lodging the FIR assumes significance in the facts of the present case and warrants consideration for grant of bail.

4.1. He would submit that allegations regarding physical assault are not corroborated by the Medical Examination Report which does not record any external perineal injuries or other injuries consistent with the alleged assault attributed to Applicant. He would submit that the medical evidence therefore does not corroborate to the allegations made by prosecutrix and the material placed on record raises a *prima facie* doubt regarding the prosecution case. He would submit that the allegation of compelling prosecutrix into prostitution is undoubtedly a serious allegation but the same cannot by itself dispense with the requirement of assessing the material collected during investigation,

particularly when there is a considerable delay in disclosure of the incidents and subsequent addition of Sections. He would submit that Applicant has no criminal antecedents and nothing incriminating has been recovered at his instance.

4.2. He would submit that Applicant is a young person aged 28 years and has been in custody since May 2024 thereby having been incarcerated for the past 2 years 4 months in prison. He would submit that although the charges have been framed on 06.05.2025, no witness has been examined till today and considering the nature of prosecution case trial is likely to take considerable time to conclude. He would submit that continued incarceration of Applicant in such circumstances would amount to pre-trial detention for an unduly prolonged period and would cause serious prejudice to his future and career. He would submit that Applicant is the sole earning member of the family.

4.3. He would submit that the investigation is complete, charge-sheet has been filed and Applicant is therefore no longer required for custodial interrogation. He would submit that Applicant is ready and willing to cooperate with the Investigating Agency and to abide by any conditions that may be imposed by this Court.

4.4. Mr. Joshi would further submit that similarly situated co-accused persons have already been granted bail by this Court vide

orders dated 06.01.2026 and 02.05.2025 and the said circumstance of parity also deserves to be considered while determining grant of bail to Applicant. He would therefore urge the Court to allow the present Bail Application.

5. Mr. Karmakar, learned APP for Respondent – State would submit that the present crime in question is grave and serious considering the age of prosecutrix. He would submit that there are serious allegations against the Applicant and hence considering the gravity of offence this Court maybe cautious in allowing the Bail Application. He would submit that Applicant may tamper with evidence and shall make attempts to influence the victim and the witnesses, such possibility cannot be ruled out. He would submit that there is substantial material placed on record to corroborate the prosecution case and thereby prove the guilt of Applicant and hence he would urge the Court to reject the Bail Application.

6. Ms. Chavan, learned Advocate appearing for Respondent No.2 – First Informant would adopt the submissions made by Mr. Karmakar, learned APP, hence they are not reiterated for brevity, in furtherance to which she would submit that allegations involve exploitation and physical assault of prosecutrix and therefore there is a reasonable apprehension that if released on bail Applicant may attempt to influence the victim or other prosecution witnesses. She

would submit that the fact that Applicant was not named in the FIR initially cannot by itself be treated as a ground for bail particularly when his role has subsequently emerged during the course of investigation.

7. I have heard Mr. Joshi, learned Advocate for Applicant, Mr. Karmakar, learned APP for Respondent – State and Ms. Chavan, learned Advocate for Respondent No.2 and with their able assistance perused the record of the case. Submissions made by learned Advocates at the bar have received due consideration of the Court.

8. She has stated that all the above events continued for over 6 months until she confided the state of affairs to her friend, who probably informed her father who is the First Informant – Complainant. Her father lodged the complaint on 23.05.2024 stating that he received information about the prosecutrix residing with Applicant whereupon Applicant was arrested. The prosecutrix has also recorded her further statement on 30.05.2024, copy of which is appended at page No.65 of the Application wherein she has narrated in detail the list of places which she had visited alongwith Applicant in Vijayapura Karnataka, Nanded, Kolhapur, Nigdi Pune, etc., where she alongwith another girl indulged into having physical relationship with other persons.

9. The investigation has led to gathering of *prima facie* evidence which is in the nature of electronic evidence on the basis of WhatsApp conversations and chats on the phone numbers of various sources which *prima facie* show that several persons including the photographs were exchanged between them and huge amounts which are mentioned. On the face of record, this appears to be the case of prostitution, the only question is about the age of the victim that she was 16 years 10 months at the time when she left alongwith Applicant.

10. It is *prima facie* seen that the FIR came to be registered against unknown persons and Applicant was not named therein. It is seen that prosecutrix herself states she had love relationship and had developed deep friendship and closeness with Applicant. It is seen that there is a considerable delay in filling of the FIR considering that parents of prosecutrix were aware of the alleged incidents. It is further seen that there are certain discrepancies in the statements of prosecutrix with regard to the time she was brought to Vijayapur for the purpose of prostitution and the number of days she was made to stay there for the said purpose. The Medical Examination Report of prosecutrix also does not record force or physical coercion. This Court is conscious that the absence of injuries by itself cannot be determinative of the allegations particularly in an offence of the present nature. However, the said circumstance when considered

along with the other material circumstances emerging from the record can be taken into consideration while considering the Applicant's entitlement to bail.

11. From the material placed on record it is seen that relationship between the parties is consensual and most importantly there is no element of violence, abuse or coercion used by the Applicant.

12. 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 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.”

13. 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

¹ AIR 1965 942

record of the case.

14. 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:-

“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

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

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."*

15. 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).”

16. 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 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***

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

Kerela Represented through the Public Prosecutor⁴ 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 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 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

⁴ 2019 SCC OnLine 783.

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.”

17. 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.

18. At the outset, it is seen that Applicant is arraigned as Accused No.1 and is in custody since 23.05.2024. The Applicant has been incarcerated for more than two (2) years. It is further seen that the charge came to be framed on 06.05.2025 and admittedly no witness has been examined till date. Thus, considering the stage of the trial and the period of incarceration already undergone by the Applicant there is no likelihood of the trial concluding in the immediate future. It is further seen that Applicant is a young person aged 28 years and has no criminal antecedents to his discredit. The continued incarceration of Applicant in the facts and circumstances of the present case would therefore amount to prolonged pre-trial

detention.

19. It is further seen that the investigation is complete and the charge-sheet has already been filed. No incriminating material is stated to have been recovered at the instance of Applicant. Applicant has also placed on record that similarly situated co-accused have been granted bail by this Court vide orders dated 06.01.2026 and 02.05.2025. Though the principle of parity cannot be applied mechanically and the role attributed to each accused is required to be considered independently, the orders granting bail to the co-accused are a relevant circumstance in the present case. In view of the Applicant's prolonged incarceration, absence of criminal antecedents, the stage of the trial, completion of investigation, absence of any incriminating recovery at his instance and the circumstance of parity, I am of the considered opinion that Applicant can be enlarged on bail.

20. 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 is directed to be immediately released from prison in connection with CR. No. 640 of 2023;
- (ii) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs.25,000/- (Rs. Twenty Five Thousand only) with one or two surety of the like

amount;

- (iii) Applicant shall report to the Investigating Officer at Dehuroad Police Station, Pune on the first Sunday of the month between 10:00 a.m. to 12:00 p.m. once every month from today 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 country without prior permission of the Trial Court;
- (vi) Applicant shall not make any attempts to contact the victim, First Informant or any witnesses by any physical or electronic means and shall not attempt to influence them or tamper with evidence in any manner;
- (vii) Applicant shall keep the Investigating Officer informed of his current residential address and mobile telephone number and shall forthwith inform the Investigating Officer of any change in his 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.

21. 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.

22. This Court appreciates the valuable assistance rendered by Ms. Chavan, learned Advocate appointed through the Legal Aid to espouse the cause of Respondent No. 2. 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 Vs. The State of Maharashtra & Anr.*⁵ and the Schedule under Regulation 18(1) of the Maharashtra State Legal Services Authority Rules, 1998.

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

[MILIND N. JADHAV, J.]

Ajay

Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date:
2026.09.28
19:23:32
+0530