

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3374 OF 2026

Nilesh @ Papya Shrikant Patil

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondents

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- Mr. Aniket Vagal a/w Ms. Savvy Kolhekar a/w Ms. Juhi Kadu, Advocates for Applicant.
- Mr. Sukanata A. Karmakar, APP for the Respondent No.1 - State.
- Ms. Saili N. Dhuru, Advocate for Respondent No.2.
- Ms. Reshma Mahadev Dadas, PSI, Alibaug Police Station present.

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 23, 2026

P. C.:

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

2. This is an application filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking enlargement on bail in connection with Special Case No. 13 of 2026 and C.R. No. 7 of 2026 registered in Alibaug Police Station for the offences punishable under Sections 69 and 70 of the Bharatiya Nyaya Sanhita, 2023 (for short “BNS,2023”) and Sections 4 and 8 of Protection of Children from Sexual Offences (POCSO) Act, 2012.

3. Briefly stated that, Applicant in the present case is 33 years old whereas victims - Prosecutrix Nos. 1 and 2 are sisters, who

are 18 and 16 years of age respectively. Prosecutrix No. 1 was working at Ankur Dry Fruit Mall when she got acquainted with Applicant at his cloth shop at Khandale village and thereafter they met regularly. It is alleged that in the month of December 2025, Applicant had physical relations with Prosecutrix No.1 in a lodge under pretext of marriage.

3.1. It is prosecution's case that on 12.01.2026 when Prosecutrix No.1 brought up the topic of marriage with Applicant, he outright refused to marry her. On 14.01.2026, Prosecutrix No.1 filed First Information Report being C.R. No. 7 of 2026 for offence punishable under Sections 69 and 70 of BNS, 2023 and Sections 4 and 8 of POCSO Act. On 15.01.2026 Applicant was arrested and was produced before Special judge. It is prosecution case that Applicant and Accused No.2 also had physical relation at a place in Kashid Beach Resort.

3.2. On 15.01.2026, Applicant was arrested and was remanded to police custody until 19.01.2026 which was extended until 23.01.2026. On 23.01.2026, 3 more accused persons namely were added.

4. Mr. Vagal, learned Advocate for Applicant would submit that the Applicant is arrested merely on the basis of suspicion and there is no reliable evidence to connect Applicant to the alleged offences.

4.1. He would refer to and rely on the decision of the Supreme Court in *State of Uttar Pradesh Vs. Anurudh and Anr.*¹ and submit that presumption under Section 29 does not apply at pre-trial bail stage. He would submit that the presumption becomes operative only once the trial begins and foundational facts are established through evidence. He would submit that the right of accused to contest this presumption and present a defence cannot be curtailed at the bail stage.

4.2. He would submit that Prosecutrix No.1 has changed her story from time to time with different allegations. He would submit that there is a stark discrepancy between contents of the supplementary statement and contents in the FIR.

4.3. He would submit that Prosecutrix No.1 has alleged that she has had physical relations with Applicant at various locations, however in her Supplementary Statement dated 20.01.2026, she was unable to name any of those locations. Hence he would persuade the Court to consider the overall material *prima facie* and allow the present Application.

5. Mr. Karmakar, learned APP for Respondent No.1 – State would submit that age of Prosecutrix No.2 was of limited understanding and she was a victim of assault committed by Applicant who was a major and therefore Applicant does not deserve any

¹ 2026 DGLS(SC) 44

leniency. He would submit that Applicant took advantage of the vulnerability of the minor despite knowing that she was a student and forced himself upon her and therefore should not be released on bail. He would therefore urge the Court to dismiss the Application.

6. Ms. Dhuru, learned appointed Advocate for Respondent No.2 would adopt the submissions of Mr. Karmakar and would urge the Court to deny grant of bail to Applicant on account of severity of crime against a minor committed by him.

7. I have heard the submissions made by learned Advocates appearing for the respective parties 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. There are three *prima facie* reasons / circumstances which impel me to consider the Bail Application of Applicant. Firstly, the stark and material discrepancies noted between the initial story in the FIR and the supplementary statements recorded later, wherein the Prosecutrix No.1 has consistently shifted her narrative introducing contradictory allegations. *Prima facie* there is a clear improvement in her supplementary statement given by her which raises substantial doubt.

9. The Supreme Court in the case of ***Mahesh Damu Khare vs. State of Maharashtra & Anr.***² in paragraph No.27 held that a

² 2024 INSC 897

prolonged duration of a physical relationship between two adults without prior insistence or protest regarding marriage indicates a consensual relationship rather than one rooted in deception.

Paragraph No.27 is reproduced below:-

“27. Thus, from the above it appears that it is more of an extra-marital affair during the aforesaid period without any insistence by the complainant for getting married to the appellant. The fact that the complainant continued to have a physical relationship for a long time without any insistence on marriage would indicate the unlikelihood of any such promise made by the appellant for marrying her and it rather indicates that the relationship was a consensual one. In our opinion, the longer the duration of the physical relationship between the partners without protest and insistence by the female partner for marriage would be indicative of a consensual relationship rather than a relationship based on false promise of marriage by the male partner and thus, based on misconception of fact.”;

10. In another decision of the Supreme Court in ***Pramod Suryabhan Pawar vs. State of Maharashtra (Supra)*** in paragraph No.18 it held as under:-

“18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.”

11. The facts in this case are squarely covered by the above ruling and conclusion in the decision of the Supreme Court. In present case, over a period of 1 year and 5 months (August 2024 to December

2025) the Prosecutrix No.1 volunteered on her own volition and went out with Applicant on several occasions and had physical relation with him consensually. It is seen that there is no material appended on record to show that such relations were because of Applicant practicing deceit to marry her or by Applicant making any false inducement to marry her. No element of force, violence, abuse or deceit is either involved.

12. Perusal of statement of Prosecutrix No.1 dated 13.01.2026, appended at page No. 82 to the Application states that Prosecutrix No.1 infact had a love relation with the Applicant. *Prima facie* it is seen that Prosecutrix No.1 remained silent until January 2026 upto which she was otherwise behaving normal is what intrigues the Court. It is seen that that there is substantial improvement in her statement recorded later and it is seen from the statements recorded by prosecution that there were a consensual relationship between the Applicant and Prosecutrix No.1 which is confirmed by the Prosecutrix No.1 herself. Hence, it is seen that the relationship over 17 months was *prima facie* consensual and Prosecutrix No.1 has failed produce any *prima facie* evidence of any deceitful intention of Applicant, the FIR seems to have been filed because of emotional distress that Applicant failed to perform his promise of marrying her which compels me to consider the Applicant's case for grant of bail.

13. Thirdly, Prosecutrix No.1 has failed to specify the precise date, time, or place of the alleged non-consensual act Applicant had sexual intercourse with her in supplementary statement dated 23.01.2026 appended at page No. 210 of the Application, thereby demonstrating a total absence of *prima facie* evidence and therefore the allegations in the FIR are entirely bald, vague, and unsubstantiated. Consequently, the continued incarceration of the Applicant on basis of allegations made by Prosecutrix violates the principles of natural justice and Article 21 of the Constitution of India.

14. Insofar as Prosecutrix No.2 is concerned, she is the younger sister of Prosecutrix No.1. She is 16 years of age. She has alleged one single episode / incident in November 2024 at Murud attributing assault on her by Applicant in her statement recorded on 14.01.2026. No details whatsoever are stated in their statement. In her supplementary statement dated 22.01.2026 no details are recalled about the lodge name of the first incident in November and on additional incident in December 2024 at Karli Khind Padi, Parelgaon is alleged. Once again except of the allegation of incidents are stated whatsoever. Further this statement is improved substantially by Prosecutrix No.2 on the same day itself stating and alleging that during the November incident, apart from Applicant, other accused persons who are Applicant's friends also outraged her modesty one by

one on entering the room. The statements made by Prosecutrix No.2 *prima facie* when read to not inspire any confidence of Court in the absence of any corroborative material placed before Court qua the allegations made therein.

15. The Prosecutrix Nos.1 and 2 both have also alleged in their supplementary statement that during the November incident, three other girls were their colleagues at work were also involved, but the statement of the said 3 girls is to the contrary and they outrightly reject the wild allegations made by Prosecutrix Nos.1 and 2 and infact confirm the fact that Applicant and Prosecutrix No.1 were in a love relationship which was known to everybody.

16. 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***³ to contend that consent 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:-

3 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."*

17. Next, the decision of this Court (Coram: Sandeep K. Shinde, J.) in the case of ***Anirudha Radheshyam Yadav Vs. The State of Maharashtra***⁴ 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)."

18. There is no doubt that presumption under Section 29 of POCSO Act exists but it is not an absolute presumption. This Court is

⁴ Criminal Bail Application No.2632 of 2019 decided on 09.01.2020

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 Kerela Represented through the Public Prosecutor***⁵ 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

5 2019 SCC OnLine Ker 783.

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 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.”

19. In the facts of the present case delineated herein, in view of the serious inconsistencies in the statements of both the Prosecutrices and admission by Prosecutrix No.1 about her love

relationship with Applicant, I am inclined to grant bail to the Applicant on the following terms:-

- (i) Applicant - Nilesh @ Papy Shrikant Patil is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Applicant shall report to the Investigating Officer of the Alibaug Police Station once every month on the third Sunday between 10:00 a.m. to 12:00 p.m. for the first one year and thereafter as and when called;
- (iii) 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 cancellation of this order;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;

- (vi) 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;
- (vii) 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
- (viii) Any infraction of the above conditions shall entail the prosecution to seek cancellation of this order.

20. 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.

21. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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by AJAY
TRAMBAK
UGALMUGALE
Date: 2026.09.23
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