

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3086 OF 2025

Shaharukh @ Salim Ikrah Shah .. Applicant
Versus
The State of Maharashtra and Anr. .. Respondents

WITH
BAIL APPLICATION NO.436 OF 2026

Mohammed Shahnawaz @ Bhaiya Mehndi
Hasan .. Applicant
Versus
The State of Maharashtra and Anr. .. Respondents

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- Mr. Aditya Parmar a/w. Mr. Subhash Hulyalkar, Ms. Pratiksha More and Mr. Tushar Bangia, Advocates for Applicant in Bail Application No.3086 of 2025.
 - Mr. Muzaffar Y. Patel a/w. Mr. Prakash H. Bada, Advocates for Applicant in Bail Application No.436 of 2026.
 - Ms. Sangeeta E. Phad, APP for Respondent No.1 in Bail Application No.3086 of 2025.
 - Ms. Rajeshree V. Newton, APP for Respondent No.1 in Bail Application No.436 of 2026.
 - Ms. Nishi Singhvi, Advocate for Respondent No.2 in Bail Application No.3086 of 2025.
 - Mr. Shreyas N. Gawankar, Advocate for Respondent No.2 in Bail Application No.436 of 2026.
 - PSI – Mahesh Kute, Nigdi Police Station.
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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 14, 2026

P.C.:

1. Heard Mr. Parmar, learned Advocate for Applicant in Bail Application No.3086 of 2025; Mr. Patel, learned Advocate for Applicant in Bail Application No.436 of 2026; Ms. Phad, learned APP

for Respondent No.1 in Bail Application No.3086 of 2025; Ms. Newton, learned APP for Respondent No.1 in Bail Application No.436 of 2026; Ms. Singhvi, learned Advocate for Respondent No.2 in Bail Application No.3086 of 2025 and Mr. Gawankar, learned Advocate for Respondent No.2 in Bail Application No.436 of 2026.

2. Bail Application No.3086 of 2025 is filed by Applicant under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Bail in connection with C.R. No.379 of 2024 registered with Nigadi Police Station for offences punishable under Sections 137(2), 65(1), 64(2) (m); 63(d)(vi), 351(3) and 96 of the Bharatiya Nyaya Sanhita, 2023; Sections 3, 4, 5(j)(ii), 5(l), 7, 8, 10, 12 and 16 of the Protection of Children from Sexual Offences Act, 2012 (for short ‘**POCSO**’); Sections 3(1)(w)(i) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Bail Application No.436 of 2025 is filed by Applicant under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Bail in connection with C.R. No.576 of 2019 registered with Nigadi Police Station for offences punishable under Sections 137(2), 65(1), 64(m); 63(vi), 351(3) and 96 of the Bharatiya Nyaya Sanhita, 2023; Sections 3, 4, 5(j)(ii), 5(l), 7, 8, 10, 12 and 16 of the Protection of Children from Sexual Offences Act, 2012 (for short ‘**POCSO**’); Sections 3(1)(w)(i) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989. Since cause of action, complaint, facts and Complainant victim is common, both Applications are heard together.

4. Applicants are arraigned as Accused Nos.1 and 2 in both the crimes. There is a third Accused person who is a juvenile who appears to be the friend of the First Informant - Complainant -victim. The victim is 15 years old at the time of the crime and therefore provisions of POCSO have been invoked as also Atrocities Act are also invoked.

5. The gamut of the proceedings turns around four issues. First Information Report (for short '**FIR**') is lodged on 29.08.2024 wherein the victim alleges an overt act on behalf of the Applicant but when the said FIR is read it is clearly gathered that the victim had on her own volition accompanied the Applicant alongwith the Accused No.3 - friend to an isolated public location near Durga tekdi as stated by them and when they were all alone she allowed the Accused No.3 to remain alone at one place separated from them and proceeded further alongwith Accused No.1 and thereafter the alleged physical relationship occurred between them.

6. It is *prima facie* seen on reading the FIR that there is no violence, abuse or coercion exercised on the victim by Accused No.1 and infact the victim had on her own volition without informing her parents had gone with the Accused No.1 whom she probably knew.

However to consider Complainant's case that she did not know accused No 1, it is *prima facie* unbelievable on reading the FIR itself. I say so because the victim has in quick succession thereafter recorded 3 further supplementary statements and has slipped miserably. The first supplementary statement is recorded on 30.08.2024 and the second supplementary statement is recorded on 07.09.2024 reiterating the aforesaid events only. However on 09.09.2024, the victim records her third supplementary statement wherein she also names the Accused No.2 as one of the Accused persons involved in the crime in question. I am informed by the learned Advocate at the bar that the investigation got transferred to the ACB office before recording of the second supplementary statement and therefore, a fresh charge of atrocities act was invoked.

7. When such a charge of Atrocities Act is invoked, one needs to consider their statements which are recorded to see if there is any specific overt act committed by accused persons or attributable to them. When the statements of the victim are seen, there is no such specific overt act or any incriminating material which invokes or calls for levy of the charge under the Atrocities Act.

8. Be that as it may, complicity of the Applicants will otherwise be proved by the prosecution at trial. In so far as Accused No.2 is concerned, considering that his name is reflected for the first time in

the third supplementary statement on 09.09.2024, he has made out an arguable case for grant of bail. In so far as Accused No.1 is concerned, notwithstanding the fact that the victim is below 18 years of age and as vehemently argued by the prosecution as well as the appointed Advocates that considering her age, the Accused No.1 had taken advantage of her vulnerability, I am not inclined to accept the said submission in view of the conduct of the victim to have voluntarily accompanied the Applicant accused No. 1 without any force or deceit. Though this Court is conscious of the fact that the victim was below 18 years of age however, there is nothing incriminating found in the statement of the victim or of the witnesses which has been recorded by the prosecution to show exercise of any restraint, violence, abuse, deceit by the Accused No.1 on the victim.

9. Applicant No.1 has also therefore made out a case for grant of bail relying on following decisions:-

10. 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

¹ BA No.1036 of 2015 – Decided on 03.08.2015

boys and girls aptly in paragraph No.11 of the said judgment which reads thus:-

“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.”

11. 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

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

pending trial before the trial Court for close to 5 years.

10. Assistance is drawn from the decision of the Supreme 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 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,

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 Prosecutor⁶** 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

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.”

12. Hence both the accused persons in view of the aforesaid *prima facie* observations are directed to be released on bail. They are in incarceration since last two years.

13. Considering the aforesaid, both Applicants have made out a case for grant of bail subject to following conditions:-

- (i) Applicants are directed to be immediately released from prison in connection with Crime Nos. 379 of 2024 and 576 of 2019;
- (ii) Applicants are directed to be released on bail on furnishing P.R. Bond of Rs. 10,000/- each (Rs. Ten Thousand only) with one or two surety / sureties of the like amount;
- (iii) Applicants shall report to the Investigating Officer at the concerned Police Station, once every month on the first Monday of the month between 10:00 a.m. to 12:00 p.m.;
- (iv) Applicants 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 they does so it will entitle the

prosecution to apply for revocation of this order;

(v) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;

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

(vii) Applicants shall keep the Investigating Officer informed of their current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable; and

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

14. 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.

15. Bail Application Nos.3086 of 2025 and 436 of 2026 allowed and disposed of in the above terms.

H. H. SAWANT

[MILIND N. JADHAV, J.]

Digitally signed
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