

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3740 OF 2026

Tushar Patilba Panchpind

.. Applicant

Versus

State of Maharashtra & Anr.

.. Respondents

.....

- Mr. Akshay Bankapur, Advocate for Applicant
- Ms. Anuja S. Gotad, APP for State
- Mr. Akshay Patil, Advocate (appointed) for Respondent No. 2

.....

CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 2, 2026

P. C.:

1. Heard Mr. Bankapur, learned Advocate for Applicant; Ms. Gotad, learned APP for State and Mr. Patil, learned Advocate (appointed) for Respondent No. 2.

2. On 05.10.226, after hearing learned Advocates appearing for the parties, the following order was passed:-

"1. Heard Mr. Bankapur, learned Advocate for Applicant and Mr. Gotad, learned APP for Respondent – State.

2. In the present case, the Applicant is 29 years old whereas the prosecutrix was 16 years and 1 month old at the time of the incident. The First Information Report (FIR) was lodged on 04.05.2026. However, the events preceding the lodging of the FIR are extremely crucial. The FIR proceeds on the basis of the First Informant i.e. the father of the prosecutrix not finding her present in the house on 29.04.2026 and thereafter lodging the FIR. Prima facie, there appears to be a delay of six days in lodging the FIR itself. Be that as it may, such delay may not, by itself, be fatal to the prosecution case. However, what is crucial to note is that much prior thereto, the prosecutrix had of her own volition, eloped with the Applicant and this fact was known to all the relatives, except the parents of the prosecutrix.

3. *The statement of the prosecutrix recorded under Section 137(2) of the BNS appended at page No.85 of the Application is unambiguous and clear. In the said statement, she herself has stated that she had gone to Applicant prior to taking the step of leaving her home and thereafter residing with the Applicant and that a marriage ceremony had also been conducted. All these details are stated at page No.86 of the Application. Prima facie it appears that the marriage took place and that thereafter she maintained a physical relationship with Applicant. Though she has stated that there was an element of threat, what is crucial to note is that Applicant and the prosecutrix remained away from the house of the First Informant i.e. father of prosecutrix for more than one month, notwithstanding which no steps were taken by the First Informant to trace the prosecutrix. Ordinarily, in such circumstances, it would be expected that the First Informant and the family members of the prosecutrix would make efforts to ascertain her whereabouts. However, there is nothing on record to show that any such efforts were made by the family members of the prosecutrix.*

4. *Hence, an arguable case is made out for grant of bail to Applicant by the learned Advocate for Applicant.*

5. *Hence, issue notice to Respondent No.2. Humdast permitted.*

6. *Learned APP appears in this present matter and waives service on behalf of Respondent No.1.*

7. *Advocate for Applicant shall serve a copy of this order and Application on the Investigating Officer forthwith. Investigating Officer is directed by this Court to depute a responsible lady Police Officer to serve the copy of this order and Bail Application on Respondent No.2 and/or her legal guardian and obtain her consent as to whether she requires legal representation through legal aid.*

8. *The consent of Respondent No.2 shall be apprised to the Court on the next adjourned date through the learned APP.*

9. *Let the aforesaid exercise be carried out within a period of two days from today.*

10. *Stand overt to **8th October 2026**. To be listed under the caption '**For Directions**'.*

11. *All parties to act on a server / certified copy of this order downloaded from the website of the Bombay High Court."*

3. Thereafter the matter was heard on 09.10.2026 when Mr. Patil, learned Advocate (appointed) was also heard by the Court and the following order came to be passed:-

"1. *Heard Mr. Bankapur, learned Advocate for Applicant and Ms. Rao, learned APP for Respondent - State.*

2. *This is an Application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Bail in connection with C.R.No.51 of 2026 registered with Harsul Police Station for offences punishable under Sections 137(2), 64(1)(2), 87, 143(3)(4), 3(5) of the Bharatiya Nyaya Sanhita, 2023; Sections 4, 6, 8 and 10 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'); Sections 9, 10 and 11 of the Child Marriage Restraint Act and Sections 3(1)(w)(i)(ii)(z), 3(2)(va) of the SC and ST Act.*

3. *The order dated 05.10.2026 stands complied with as informed by the learned prosecutor. Ms. Rao, learned APP informs the Court that consent from Respondent No.2 for appointment of Advocate through Legal Aid has been given and appropriate orders be passed for appointing Advocate to espouse the cause of Respondent No.2.*

4. *In that view of the matter, I am inclined to appoint Mr. Akshay Annaso Patil, Advocate practicing in this Court (Mobile 9892252175) through the High Court Legal Aid Services Committee of this Court to represent and espouse the cause of Respondent No.2 forthwith.*

5. *The High Court Legal Aid Services Committee of this Court is directed to give appointment letter and papers of the matter to the appointed Advocate forthwith in accordance with law to represent and espouse the cause of Respondent No.2 through the Legal Aid.*

6. *Advocate for Applicant shall also serve a copy of Application on the appointed Advocate forthwith to save time. Appropriate instructions can be given by Respondent No.2 to the appointed Advocate so that the same can be argued and placed before Court on the next adjourned date.*

7. *Learned APP shall inform the Investigating Officer to furnish the details of First Informant to the learned appointed Advocate and the Investigating Officer shall also give the details of the appointed Advocate to the Respondent No.2 / guardian of Respondent No.2 forthwith alongwith a copy of this order.*

8. *Stand over to 12th October 2026 at 03:00 p.m."*

4. Today Mr. Patil has drawn my attention to the fact that in Section 183 statement recorded by the victim appended at page Nos. 85-87, the victim herself has stated that it could be possible that the amount of Rs. 3 Lakhs was exchanged between her relatives and the Applicant. I have perused the said statement. However, if the said statement is read as a whole, it *prima facie* gives impression that the association of the Applicant with the victim was without any violence,

force, or abuse notwithstanding the fact that there may be any other reason for them to be together.

5. As opined by me in my previous order, the timeline in the present case leaves many questions unanswered. Needless to state that the complicity of the Applicant can be undoubtedly proved by the prosecution at trial. At the threshold for grant of bail, the *prima facie* material which persuades me to consider the case of the Applicant is the Section 183 statement of the victim herself which enures to the benefit of the Applicant. It needs to be considered that Applicant and victim stayed together for more than one month, got married in the presence of his family members which are very strong circumstances for grant of bail.

6. 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 ever violent or forced and that the offender has no antecedents. Though the age of the victim below 18 years is argued by the prosecution being one of the vulnerable reasons, 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.***¹ which is reproduced below for ease of reference:-

¹ Criminal Bail Application No.1101 of 2024 decided on 27th March 2025

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

*10. Assistance is drawn from the decision of the Supreme Court in the case of **S. Varadarajan v. State of Madras**² 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**³ to contend that consensus of the prosecutrix who is below the age of 18 years is a mitigating circumstance for Trial Court to consider. In furtherance to the above, Court has laid down certain specific guidelines after taking into consideration relevant cases as also the ethos and development of the age of the young offenders in the Indian Society in general. Court in paragraph Nos.8, 9,11 and 12 has laid down certain principles which I find it apt to be reproduced herein below for consideration of bail in such Applications. Paragraph Nos.8, 9, 11 and 12 read thus:-*

“8. It is to be noted that the case of S. Varadarajan was decided in the year 1967 when the women were

² AIR 1965 942

³ Bail Application No. 1036 of 2015, decided on 03.08.2015.

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."

13. 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

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

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 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 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*

5 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.”

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

- (i) Applicant is directed to be immediately released from prison in connection with C.R. No. 51/2026;
- (ii) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs. 25,000/- (Rs. Ten Thousand only) with one or two sureties in the like amount;
- (iii) Applicant shall report to the Investigating Officer at concerned Police Station, once every month on the first Sunday of the month between 10:00 a.m. to 12:00

p.m.;

- (iv) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates, unless specifically exempted and will not take any unnecessary adjournments, if he does so it will entitle the prosecution to apply for revocation of this order;
- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vii) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable;
- (viii) 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
- (ix) Any infraction of the conditions shall entail cancellation of bail granted to the Applicant.

8. This Court appreciates the assistance rendered by Mr. Patil learned Advocate appointed through the Legal Aid to espouse the

cause of Respondent No. 2. His fees be paid by the High Court Legal Aid Services Authority as per rules on production of a server copy of this order and other compliances in accordance with the decision of this Court in the case of ***Sanjyot Nitin Telharkar v. The State of Maharashtra & Anr.***⁶ and the Schedule under Regulation 18(1) of the Maharashtra State Legal Services Authority Rules, 1998.

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

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

[MILIND N. JADHAV, J.]

Amberkar

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by RAVINDRA
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⁶ Judgment dated 25.09.2024 passed in Misc. Civil Application No. 134 of 2024