

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 4651 OF 2025

Numan Mannabi Sayyad

.. Applicant

Versus

State of Maharashtra and Anr.

.. Respondents

.....

- Ms. Rui Danawala a/w. Mr, Ibrahim Shaikh i/b. Mr. Ashraf Ali Shaikh, Advocates for Applicant.
- Ms. S.G. Talhar, APP for Respondent No.1– State.
- Mr. Vipul Dushing a/w. Mr. Ashraf Kazi, Advocates for Respondent No.2.

.....

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 19, 2026.

P.C.:

1. Heard Ms. Danawala, learned Advocate for Applicant, Ms. Talhar learned APP for Respondent No.1 State and Mr. Dushing, learned Advocate for Respondent No.2.

2. This is an application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking bail in connection with CR No.90 of 2025. Age of prosecutrix is 15 years. Applicant is 20 years old, sole accused and charged for offenses punishable under Sections 78(1) and 351(2) of Bharatiya Nyaya Sanhita, 2023 and Section 12 of Prevention Of Children from Sexual Offences Act, 2012. Applicant is in custody for over 1 year and 5 months.

3. Complaint is lodged on 15.02.2025 for the first time by mother of prosecutrix on her behalf. Her statement is appended at

page No.19. *Prima facie* reading of this statement shows that from February 2024 onwards, Applicant who was residing in the same building, followed the prosecutrix on certain occasions to her school and stalked her. After this incident there was a meeting held between the family members of both sides and Applicant was made to understand and told not to follow and harass the prosecutrix. Next charge stated in the complaint is that in May 2024, one fine day Applicant visited the house of the prosecutrix when she was alone and orally told her that he liked her very much and she should continue talking to him. The first informant mother has stated that in the evening of that every day once again the family of the Applicant were called and he was made to understand by both the sides not to harass the prosecutrix otherwise the First Informant would report the matter to the police. The third charge in the complaint is that on 07.01.2025, prosecutrix accompanied Applicant in his friend's four wheeler car to a nearby place called Moshi at 9:30 a.m. where he confessed his love to her and proposed marriage. These are the 3 specific statements made in the first recorded statement by the First Informant – mother after consulting the prosecutrix on 15.02.2025.

4. Learned Advocate for Applicant would draw my attention to the Supplementary Statement dated 18.02.2025 given by First Informant 3 days later wherein she has recorded that in February 2024 Applicant had visited the house of prosecutrix and told her that he

wanted to have physical relations with her or otherwise if she refused he will harm her brother. It is further stated therein that thereafter Applicant used to frequently meet the prosecutrix in the parking lot of the building or outside her school. These are the two additional charges made in this first Supplementary Statement.

5. Learned Advocate for Applicant next draws my attention to the second Supplementary Statement dated 24.02.2025 in which First Informant has stated that in December 2024, Applicant lured the prosecutrix to accompany him for a pleasure trip to Anandi and had taken her to a lodge, but the lodge owner did not give them a room looking at her age and therefore they returned back. The lodge owner is not examined by the prosecution as no further details are given. In this third statement it is further stated that Applicant used to borrow the flat / room key from one of his friend name Prashant Behera residing in the adjacent building and used to take the prosecutrix there regularly. In this statement for the first time it is stated that Applicant forcefully had physical relations with the prosecutrix in the vacant flat belonging to Prashant Behera. Thereafter, it is stated that on 3 – 4 occasions (about which no details are given) Applicant had physical relationship with the prosecutrix in the same vacant flat.

6. These are the three statements given by the mother of prosecutrix. To ascertain *prima facie* veracity of these statements,

Prashant Behera's statement is not recorded by the prosecution. There is a gap of 3 days between the first and second statement and a further gap of 6 days between the second and the third statement. It is seen that First Informant has improved her case in a systematic manner and therefore the three reports as filed become *prima facie* suspicious on the face of record and call for *prima facie* investigation. Juxtaposed with these reports is the statement of the prosecutrix recorded on 18.02.2025 appended at page no.29 which does not refer to the charge made in the first and second statement by her own mother at all. Hence there is a clear dichotomy.

7. Against this backdrop, my attention is drawn by the learned Advocate for Applicant to the statement of father of prosecutrix appended at page no. 65 and recorded on 16.02.2025 i.e. one day after filing of the First Information Report. In this statement what is stated in the first statement of the First Informant is reiterated. The prosecution has also recorded the statement of one Stephen Benedict Pereira, a close friend of Applicant residing in the adjacent building who has corroborated the fact that Applicant used to borrow the flat key of Prashant Behera's flat and take his girl friend over there on several occasions and he knew about the same though he has not specifically mentioned the name of the prosecutrix.

8. The father of the prosecutrix has then gave Supplementary

Statement on the same lines as the First Informant mother. The Medico – legal Examination Report copy is appended at page No.73 and on page No.75 thereof the prosecutrix has recorded her statement and confessed about she having had a history of multiple sexual intercourse episodes with the Applicant since February 2024 onwards. She has recorded that Applicant was known to her as he was residing in the same building and she has not given any history of use of physical force or assault on her by Applicant. This is also confirmed from the answers given by the prosecutrix in Clause No. 15 of the said Medical report.

9. Mr. Dushing, learned Advocate appearing for the prosecutrix has argued that age of the prosecutrix was of limited understanding as she was a IXth Standard student and she was a victim of assault committed by the Applicant who was a major and therefore the Applicant does not deserve any leniency. Mr. Dushing has also vehemently argued that Applicant has taken advantage of the vulnerability of the minor despite knowing she was a student and had forced himself upon her and therefore should not be released on bail as he is bound to harass the prosecutrix and trouble her. Ms. Talhar, learned APP has supported the submissions made by Mr. Dushing and contended that looking to the fact that prosecutrix was a minor, the Applicant having taken her advantage, this Court should dismiss the Application.

10. Ms. Danawala, learned Advocate has argued on two specific points namely that there is substantial improvement in the statements recorded by the First Informant and her core submission is that if all the statements recorded by the Investigation Officer are perused it will be evident that the relationship between the Applicant and the prosecutrix was consensual. She would submit this with a lot of force because there is not a single statement or charge which states that Applicant had ever used force on the prosecutrix. She would submit that this is confirmed even by the prosecutrix herself in her own statement given to the doctor. Lastly she would submit that over a substantial period of time prosecutrix on her own volition accompanied the applicant to various places and never ever raised any complaint or objection. Hence, she would submit that eventhough the prosecutrix being a minor, in the above facts she was completely aware about her actions and herself volunteered on several occasions to accompany the applicant which is borne out from the statements which are recorded. Hence, she would submit that the application be allowed after on perusing the record on the ground of both parties having indulged in physical relationship on multiple occasions from February 2024 upto February 2025 i.e. approximately 12 months.

11. I have heard the submissions of the learned Advocates and considered the record of the case.

12. Admittedly both parties knew each other well. *Prima facie* there is a clear improvement in the three statements filed by the first informant which raises a substantial doubt. There is nothing in the statements which shows any coercion or abuse by the Applicant to have forced the prosecutrix, rather it is seen that over a period of one year the prosecutrix volunteered to go out with the Applicant on several occasions and maintained contact with him. Difference in age between applicant and prosecutrix is around to 5 – 5.5 years. Silence of the prosecutrix until 2025 upto which she was otherwise behaving normal is what intrigues the Court.

13. Most importantly despite being aware of the multiple meetings held between the parties and the Applicant being told not to harass and meet the prosecutrix by the parents, it is seen that the prosecutrix continued meeting the Applicant. Considering the proximity of age between the two parties and the above facts and the nubile age, consensual relationship in these facts cannot be ruled out and is writ large on face of record. Though this Court is conscious of the fact that delay in filing the First Informant Report is not fatal to the prosecution case, but the aforementioned reasons and the period of 12 months of the parties meeting together on several occasions and going out shows that the prosecutrix was clearly aware of her actions. She never informed her parents before going out and accompanying the Applicant or after returning back over a period of 12 months. She

herself has confessed to having physical relation with Applicant on multiple occasions. Hence, the relationship over 12 months was *prima facie* consensual, which compels me to consider the Applicant's case for grant of bail.

14. 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 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

¹ BA No.1036 of 2015 – Decided on 03.08.2015

marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such cases.”

15. In view of my above *prima facie* observations borne out from the record, silence of Applicant and discrepancy noted herein above coupled with and considering the age of the Applicant, I am of the opinion that in the above facts further incarceration of the Applicant in prison would amount to giving him punishment before conviction. Considering Applicant's age of 20 years and if he is enlarged on bail, Court is hopeful that Applicant's family will undoubtedly do their duty to make every effort and attempt to reform and aid the Applicant in leading a reformed life while on bail rather than keep him in prison and expose him to criminal outlook and life in prison.

16. However on the flip side, if a chance is given to the Applicant because of his young age by enlarging him on bail, there is a possibility that he will be remorseful and repent in retrospect. This is a chance required to be taken by the Court because punishment has to be believed to be inflicted for a reformative result rather than being punitive in nature and that too on consideration of the facts of each case. Undoubtedly the trial will determine the punishment for the offence. While considering Bail Application in such facts, Court feels that reform and rehabilitation of the young under trial accused needs to be considered especially when age of the accused is young so that the accused gets an opportunity / or is given an opportunity to reform,

rehabilitate and earn his livelihood honorably from the perspective of social integration. This is a chance which the Court must take considering the young age of accused. By considering this Court is not stamping approval of any of the actions of Applicant regarding the alleged crime in question. Court is also equally conscious of the offence. In the present case, ages of the Applicant and the prosecutrix are very young. If the Applicant is incarcerated in prison further, there is every possibility that he might loose faith in the institution and society at large and may tread the path of criminality or would waste his life. Incarceration in prison statistically shows that it exposes many youth to abuse. There are several harms of incarceration which are inflicted disproportionately on the youth. This is the reason why this Court feels that any / every semblance of a chance towards a reformatory approach in punishment should be adopted, especially in the case of young offenders. Hence every opportunity or to that extent risk should be constructively taken by the Court in the case of young offenders – accused before committing such accused to further custody and give such accused an opportunity to become a good citizen in the Society. These observations are only in the view of the young age of the Applicant before me and it is only a means to explore an alternative to incarceration so that the Applicant can be at his home with his parents, elder brothers and the community which may have a positive impact on his mind.

17. 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 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

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

³ AIR 1965 942

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, 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

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

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*

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

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 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**⁶ 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.”

18. 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 herein, I am inclined to grant bail to the Applicant on the following terms:-

- (i) Applicant 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 concerned 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.

19. 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 and the trial shall be adjudicated on its own merits in accordance with law.

20. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

HARSHADA
HANUMANT
SAWANT

Digitally signed
by HARSHADA
HANUMANT
SAWANT
Date:
2026.08.21
12:49:11 +0530