

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (BA) NO. 638 OF 2021

(Roshan s/o Sheshraoji Kinnake ..vs.. State of Maharashtra, through PSO, PS Pulgaon, Wardha)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.R. Vyas, Counsel for the applicant,
Mrs. Kalyani Deshpande, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 12-07-2021

Hearing was conducted through video conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. The applicant is accused of sexually assaulting a six years old boy. Crime 32/2021 is registered with Pulgaon Police Station, District Wardha for offences punishable under Sections 363 and 377 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act ("POCSO Act" for short).

3. The learned Counsel Mr. R.R. Vyas does make an attempt to persuade me to hold that *prima facie* the prosecution version is not credible.

4. *Prima facie*, whether there was a penetrative assault or only an attempt, is arguable. The medical papers do not refer to any injury as such. Even the victim states that hearing the voice of his parents who

came searching for him, the applicant fled.

5. Be that as it may, even if it is assumed that the incriminating material on record would attract the provisions of Section 18 of the POCSO Act and that the acts attributed would fall in the category of an attempt, the punishment is severe.

6. It is well settled that if the foundational facts are proved, the statutory presumption under the POCSO Act will have to be invoked and to that extent the burden will shift.

7. Considering the material on record and the stringent provisions of the POCSO Act and further the gravity of the allegations and the severity of the punishment provided, at this stage the prayer for bail cannot be considered.

8. The learned Special Judge is requested to proceed with the trial as expeditiously as possible, and in any event, to conclude the same within the next nine months.

9. If there is no significant progress in the trial in the next four and half months, the applicant shall be entitled to renew the request for bail.

JUDGE