



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

923 BAIL APPLICATION NO. 602 OF 2025

ASHFIYAN KHALIL MOMIN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Nilesh S. Ghanekar.
APP for Respondent / State : Mr. K. K. Naik.
Advocate for Respondent No.2 : Mr. Y. K. Bobade. (Appointed).
...

CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 01st October, 2025.

P.C.:

1 Heard.

2 This is an application is filed for granting regular bail in connection with Crime No.193 of 2024, registered with Peth Beed Police Station, District Beed, for the offences punishable under Sections 64, 64(Z)(T), 70(1)(2) of the Bharatiya Nyaya Sanhita, 2023 under Sections 4, 5(g), j(1), 5(k) and 6 of the POCSO Act, 2012 under Sections 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act read with Section 92(D) of Rights of Persons with Disabilities Act, 1989.

3 The learned counsel for the applicant pointed out the report, wherein it is averred by the police official that the victim girl is 17 years and 6 months old. She was brought by an unknown person

near one water tank. The people were gathered there and that girl was crying. On enquiry, she said that someone slept with her. She was then taken to the police station and handed over to *Jawala Kendra*. She then fled away during the night time. Then again she was found. On enquiry, she stated that aggravated sexual assault is committed with her by one person. Crime was registered and the investigation started.

4 The learned counsel for the applicant pointed out the charge-sheet and submitted that there is no material against the applicant to show that he is involved in the said crime. He pointed out that at the instance of co-accused, the spot of incident is pointed out and accordingly, disclosure *Panchanama* was drawn up, which is not admissible. He further pointed out the statement of medical shop keeper, who stated that co-accused purchased the condom on the day of incident. He further pointed out the statement of the victim girl and her disability certificate showing that she is “mild mental retardation with mood disorder” issued on 13th September, 2023. Therefore, her statement is not accordance with the prosecution case. He submitted that the applicant is behind bars for more than 14 months. The CA report is filed, which is negative. The applicant has roots in the society. He will not flee away from the trial. The trial will take a long period. The applicant has no criminal antecedents. It is lastly prayed to allow the

application.

5 The learned APP for the State and the learned appointed counsel for respondent No.2 strongly opposed the application and submitted that the applicant is booked for serious crime of committing aggravated sexual assault on the prosecutrix, who is mentally retarded and took disadvantage of her state of health and mind. The medical shopkeeper has stated that condom was purchased by co-accused. Considering all these aspects, it is lastly prayed to reject the application.

6 Perused the charge-sheet, particularly, the report and the statement of the victim child and the report of the medical examination of the victim child and the applicant as well as the co-accused and the statements of the witnesses.

7 The disability certificate of the victim child shows that she is mentally retarded, which is reflected in her statement recorded by the police in the question-answer form. In her statement, she did not point out the name of the applicant or co-accused. The CA report is in negative. The report of medical examination of the applicant and the co-accused also does not show any injury sustained to them. If all these aspects are considered together, the applicant is certainly entitled for bail. Considering all these reasons, the application

deserves to be allowed on the principle that bail is rule and jail is exception, on certain conditions. Hence, the following order:-

ORDER

- I. The application is allowed.
- II. The applicant in connection with Crime No.193 of 2024, registered with Peth Beed Police Station, District Beed, for the offences punishable under Sections 64, 64(Z)(T), 70(1)(2) of the Bharatiya Nyaya Sanhita, under Sections 4, 5(g), j(1), 5(k) and 6 of the POCSO Act, under Sections 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act read with Section 92(D) of Rights of Persons with Disabilities Act, be released on bail on furnishing personal bond of Rs.50,000/- with surety of the like amount on following conditions:-
 - a) The applicant shall not pressurize the prosecution witnesses and tamper with the prosecution evidence, in any manner.
- III. The fees of Mr. Y. K. Bobade, learned counsel appointed to represent the cause of respondent No.2 be paid through the High Court Legal Services Sub-Committee, Aurangabad as per Rules and schedule.

[SANJAY A. DESHMUKH, J.]