



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 877 OF 2025

SHUBHAM DILIP AWASARMAL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Surse Sunil B.
APP for Respondent/State : Mr. D.J. Patil
Advocate for Respondent 2 : Ms. Mayur S. Hange (appointed)
Advocate - Amicus Curiae : Mr. A.R. Joshi
...

CORAM : ARUN R. PEDNEKER, J.

DATE : 14/08/2025

ORDER :

1. Heard the learned counsel for the applicant, the learned APP for the respondent-State, Ms. M.S. Hange, learned advocate appointed for respondent No. 2 and Mr. A.R. Joshi, who has assisted this Court as amicus curiae in this case.

2. The applicant is seeking bail as he is arrested in connection with Crime No. 220/2024 dated 8.6.2024 registered with Shillegaon Police Station, District Aurangabad for the offences punishable under sections 376, 376(2) (N), 376(3), 366-A, 363, 109 of Indian Penal Code ('IPC' for short) and sections 4, 6, 8, 12, 17 of the Protection of Children From Sexual Offences Act ('POCSO' Act for short).

3. This Court vide order dated 14.07.2025 has recorded the submissions of the learned counsel for the applicant and learned APP, which are as under :-

"3. The FIR is registered by the father of the victim that on 7.6.2024 unknown person had kidnapped the victim, who was 14 years, 11 months and 10 days old at the time of incident. It is stated that on 16.6.2024 the victim was traced. Thereafter, statement of victim was recorded and the crime is registered for aforesaid offences. In the statement of victim, she has stated that the applicant had forcefully taken the

victim with him and had forceful sexual intercourse with her. Investigation is completed and chargesheet in the matter is also filed on 10.09.2024. The bail application of the applicant is rejected by the trial Court. After filing of the chargeheet, the present bail application is filed before this Court.

4. The learned counsel for the applicant submits that on perusal of statement of victim recorded under section 164 of Cr.P.C., it reveals that the victim has travelled with the applicant on her own will as there was love relations between them and she has stayed with the applicant for the period of ten days. The learned counsel submits that the victim was of age of understanding. The learned counsel submits that applicant is only 20 years of age and since the date of arrest he is behind bars. Investigation in the matter is completed and chargeheet also filed. The learned counsel has placed reliance on the following cases :-

(i) Order of Supreme Court in the case of **Dhanraj @ Musa Vs. State of Rajasthan & Anr in Criminal Appeal No. /2024 (@SLP (CRL) No. 11020/2024)** dated 4.10.2024.

(ii) Judgment of this Court in the case of **Ranjit Dattatray Kolekar Vs. The State of Maharashtra and others in Criminal Appeal No. 445/2022** dated 6.5.2022 and

(iii) Order of this Court in the case of **Nitin Damodar Dhaberao Vs. State of Maharashtra in Criminal Application (BA) No. 718/2023** dated 5.1.2024

5. The learned counsel for the applicant, therefore, prays to release the applicant on regular bail.

6. Per contra, the learned APP has relied upon the order of the Hon'ble Supreme Court in the case of **X (Minor) Vs. The State of Maharashtra in Criminal Appeal No. 263/2022 (Arising out of SLP (Cri) No. 9317 of 2021)** dated 21.2.2022 and prayed for rejection of application for grant of bail."

4. Considering the judgment of the Hon'ble Supreme Court in the case of **X (Minor) Vs. The State of Maharashtra** cited supra, this Court has requested the learned counsel Mr. Amol Ram Joshi, amicus curie, to assist the Court in

deciding whether bail can be granted to the applicant in view of the above judgment of Supreme Court in the case of **X (Minor)**, wherein Hon'ble Supreme Court, in para 6 has held as under :-

"6. The High Court was manifestly in error in allowing the application for bail. The reason that from the statement under Section 164 and the averments in the FIR, it appears that "there was a love affair" between the appellant and the second respondent and that the case was instituted on the refusal of the second respondent to marry the appellant, is specious. Once, prima facie, it appears from the material before the Court that the appellant was barely thirteen years of age on the date when the alleged offence took place, both the grounds, namely that "there was a love affair" between the appellant and the second respondent as well as the alleged refusal to marry, are circumstances which will have no bearing on the grant of bail. Having regard to the age of the prosecutrix and the nature and gravity of the crime, no case for the grant of bail was established. The order of the High Court granting bail has to be interfered with since the circumstances which prevailed with the High Court are extraneous in view of the age of the prosecutrix, having regard to the provisions of [Section 376](#) of IPC and [Section 6](#) of POCSO."

5. Mr. A.R. Joshi, amicus curie on the issue of "(a) Whether age of minor can be considered while granting regular bail under the protection of Children From Sexual Offences act, 2012?" has made submissions as under :-

- 1) Pursuant to Article 15 of The Constitution of India the State is empowered to make special provision for children.
- 2) Article 39 provides that the State shall direct policy towards securing that children of the tender age are not abused and their childhood and youth are protected against exploitation and they are given facility to develop in a healthy manner and in conditions of freedom and dignity.
- 3) The Union of India is a party to the United Nation Convention on the Rights of the Children, which requires the state parties to undertake all appropriate national and multilateral measures to prevent:-
 - (a) Inducement or coercion of a child to engage in any

unlawful sexual activity;

(b) Exploitative use of child in prostitution or other unlawful sexual practices; and

(c) Exploitative views of child in pornography purposes and materials.

4) In view of obligations on signatory States, it was proposed to enact a comprehensive legislation to provide for protection of child from offences of sexual assault, sexual harassment and pornography with due regard for (i) safeguarding interest and well-being of children at every stage of judicial process, (ii) incorporating child friendly procedures for reporting, (iii) recording of evidence, investigation and trial of offences and provisions for establishment of special courts for speedy trial of such offences.

5) To give effect to these objectives, the Parliament of the Union of India enacted the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "The POCSO Act").

6) The POCSO Act is gender neutral and regards the best interest and welfare of the child as paramount importance at every stage so as to ensure the healthy physical, emotional, intellectual and social development of a child.

7) One of the essential features of the act is also noticed from Sec. 29 of the Act, which reads as here under:-

"29. Presumption as to certain offences.- Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this 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.

30. Presumption of culpable mental state.-

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that

prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation. In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact."

8) It is also relevant to note that, Sec. 2 (1) (d) definition of a child means any person below the age of 18 (Eighteen) years.

9) The term 'Child' and 'Minor' are often used interchangeable in common parlance. Further, both 'child' and 'minor' have multiple and varying definitions under different laws and legal meaning of these terms lack uniformity.

a) The Age of majority is set at 18 years under the Indian Majority Act, 1875.

b) The Hindu Minority and Guardianship Act, 1956 and The Guardian and Wards Act, 1890 define 'minor' as a person below age of 18.

c) Under The Prohibition of Child Marriage Act 2006, child is person under the age of 21 in case of males and under 18 in case of females.

d) The Right of Children to Free and Compulsory Education Act, 2009 defines child as a person between the age 6 to 14 years.

e) Under The Juvenile Justice Act and POCSO Act, child is defined as person under the age of 18 years.

f) The Child Labour (Prohibition of Regulation) Act, 1986 defines 'child' as a person, who has not completed the age of 14. This is the only law though defines adolescent as a person between the age 14 to 18 years. The definition of 'adolescent' is absent under all other laws and is defined in the context of government policies and programmes.

10) Under the Criminal Law jurisprudence, there is a

presumption that a child is incapable of doing any wrong or committing a crime.

11) Prior to enactment of POCSO Act, there was no specific provision dealing with section of children and charges were primarily filed under the I.P.C. especially under sec.375, 354 and 377 of The Indian Penal Code, 1860 (hereinafter referred to as "The IPC"). The said provisions are not gender neutral, as a result male child did not enjoy equal protection against sexual abuse under the law. As against sexual abuse of male child, the general provisions of I.P.C. relating to hurt, or force and or also were permitted.

12) AGE OF CONSENT:

The age of consent is the age of at which a person becomes legally capable of agreeing to marriage or sexual intercourse. This age is defined by Statute. At present, the age of consent for sexual intercourse is 18 years on account of provisions of The POCSO Act. Prior to POCSO Act there was no separate definition of age of consent and it was considered primarily by virtue of Sec. 375 of I.P.C./defines rape. The rape being a crime that can only to be committed against the woman, the age of consent for sexual intercourse was only defined for a female, under which age of consent is immaterial and sexual activity amounts to statutory rape.

13)

14) The scheme of POCSO Act does not define as to what is non-exploitative relationship or the concept of older adolescence.

15) The definition of child as set out under the POCSO Act leaves no discretion for a trial judge to conclude whether a consent given by a child below 18 years is a consent or not. An act which is otherwise defined to be an offence cannot be described as a romantic relationship. The Hon'ble Supreme Court of India in In Re.: Right to Privacy of Adolescents [(2024) 8 SCR 575] has held as hereunder:

"16. The Division Bench has invited a very peculiar concept of "non-exploitative sexual acts" while dealing with the offences punishable under Section 376(2)(n) of the IPC and Section 6 of the POCSO Act. We fail to understand how a sexual act, which is a heinous offence,

can be termed as non-exploitative. When a girl who is fourteen years old is subjected to such a horrific act, how can it be termed as "non exploitative"? In paragraph 17, the High Court refers to "marital rape". In this case, there is no evidence of marriage. The Bench has also invented a non-existent category of "older adolescents" and lamented about the lack of recognition of the consensual behaviour of older adolescents. We fail to understand this concept of "older adolescents". Further, the Division Bench goes on to observe that sexual behaviour adolescents, particularly from the onset of puberty, is established as being a natural, normative and integral part of an adolescent's development.

17. We must deal with some of the observations made by the High Court. The High Court concluded that by equating consensual and non-exploitative sexual acts with rape and aggravated penetrative sexual assault, the law undermines the bodily integrity and dignity of adolescents. The High Court was not called upon to discuss the merits and demerits of the existing laws. What is shocking is the observation made in paragraph 23 of the impugned judgment where the High Court observed that while achieving ostensible objectives to protect all children below 18 years from sexual exploitation, the law's unintended effect has been the deprivation of liberty of young people in consensual relationship. The Court, surprisingly, carved out a non-existing category of romantic cases in the rape cases. While dealing with the offences under the POCSO Act, shockingly, the Court observed that the law undermines the identity of adolescent girls by casting them as victims, thereby rendering them voiceless. The Court says that, on the other hand, adult boys are discriminately treated as children in conflict with the law. Thereafter, in paragraph 25, the Court proceeded to criticize the POCSO Act by observing that it clubs all persons below eighteen years without considering their developing sexuality, evolving capacity and the impact of such criminalisation on their best interests. In paragraph 28, the Court went further. It held that instead of protecting the adolescents from abuse, the law exposes them in factually consensual and non-exploitative relationships to the risk of criminal prosecution. It compromises the mandate of protecting the children. Therefore, the Court observes that an amendment is necessary to decriminalise consensual

sexual acts involving adolescents above sixteen years. The High Court, while dealing with an appeal against the order of conviction, was not called upon to make the observations which we have referred to above. Perhaps these were the subjects on which only the experts could have debated at a different forum. The judges ought to have avoided expressing their personal views even assuming that there was some justification for holding the views. While the High Court observed this, it forgot that in the facts of the case, the Court was not dealing with the sexual acts involving adolescents above sixteen years, as the age of the victim was fourteen years and the accused was twenty-five years at the relevant time.

18. In paragraph 29, the Court went into the question of rights-based approach, which was completely unwarranted. In paragraph 30.1, the Court referred to the generation of androgenic steroids and secretion from the pituitary gland. Thereafter, the Court laid down the duties and obligations of every female and adolescent in paragraph 30.3, which we have quoted above. No reasons are required to be recorded for holding that incorporation of the same in the judgment is entirely irrelevant and unwarranted. After that, the Court proceeded to lay emphasis on incorporating the aspects of reproductive health and hygiene into the school curriculum. There are several statements and conclusions in the impugned judgment which, to say the least, are shocking. Perversity is writ large on the face of the judgment, which can be seen in several paragraphs of the impugned judgment.

19. The duty of the High Court was to ascertain on the evidence whether the offences under Section 6 of the POCSO Act and Section 376 of the IPC were made out. In view of "sixthly" in Section 375 of the IPC, penetrative intercourse with a woman under eighteen years of age, with or without her consent, constitutes an offence of rape. Therefore, whether such offence arises from a romantic relationship is irrelevant. How can an act that is an offence punishable under the POSCO Act be described as "a romantic relationship"? The High Court went to the extent of observing that the case of criminalisation of a romantic relationship between two adolescents of opposite sex should be best left to the wisdom of the judiciary. The Courts must follow and implement the law...."

16) Thus, consent of a child below 18 years is an absolutely irrelevant factor at all stage during the course of proceedings under the POCSO Act.

17) It is not open for courts to dilute the offence as defining the offences comes within the jurisdiction of legislature.

18) Section 439 of The Code of Criminal Procedure, 1973 and 483 of The Bhartiya Nagarik Suraksha Sanhita, 2023 provide for special powers of High Court or Court of Sessions regarding bail. Power to grant bail is not touched or affected in any manner by any provision under the POCSO Act. However, the age of consent by a person below 18 years remains an irrelevant consideration while granting bail. The Hon'ble Bombay High Court while considering in Bail Application No.3372/2021 (Faizan Wahid Baig Vs The State of Maharashtra) and Criminal Application (Bail) No. 718/2023 decided on 05/01/2024 (Nitin Damodar Dhaberao Vs The State of Maharashtra) took into account consensual nature of relationship and granted bail to accused persons, however the decisions were prior to judgment by the Hon'ble Supreme Court in the matter of In Re: Right to Privacy of Adolescents [(2024) 8 SCR 575].

19) The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.

20) Factors to be considered while granting bail;

- i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- ii) nature and gravity of the accusation;
- iii) severity of the punishment in the event of conviction;
- iv) danger of the accused absconding or fleeing, if released on bail;

- v) character, behaviour, means, position and standing of the accused;
- vi) likelihood of the offence being repeated;
- vii) reasonable apprehension of the witnesses being influenced;
- viii) danger of justice being thwarted by grant of bail.
- x) Prima facie satisfaction of the court in support of the charge.
- x) While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary.

The list is not exhaustive.”

6. Having noticed the above submissions of Mr. Joshi, primarily it is seen that the age of the minor is absolutely irrelevant factor at all stages of the proceedings under POSCO Act. The consent of minor is irrelevant under the POSCO Act and this Court cannot dilute the offences under the POSCO Act by holding that the minor was of the age of understanding. However, while considering grant of bail in POSCO offences, there is no statutory restriction/bar under the statute and the settled principles of granting bail in criminal jurisprudence would apply.

7. While considering age of victim in determining the offence under POSCO Act even in matrimonial relation, it is relevant to note the judgment of the Hon’ble Supreme Court in the case of **Independent Thought Vs. Union of India** reported in [2017] 13 S.C.R. 82 at para 105 has observed as under :-

“105. On a complete assessment of the law and the documentary material, it appears that there are really five options before us: (i) To let the incongruity remain as it is – this does not seem a viable option to us, given that the lives of

thousands of young girls are at stake; (ii) To strike down as unconstitutional Exception 2 to [Section 375](#) of the IPC – in the present case this is also not a viable option since this relief was given up and no such issue was raised; (iii) To reduce the age of consent from 18 years to 15 years – this too is not a viable option and would ultimately be for Parliament to decide; (iv) To bring the [POCSO Act](#) in consonance with Exception 2 to [Section 375](#) of the IPC – this is also not a viable option since it would require not only a retrograde amendment to the [POCSO Act](#) but also to several other pro-child statutes; (v) To read Exception 2 to [Section 375](#) of the IPC in a purposive manner to make it in consonance with the [POCSO Act](#), the spirit of other pro-child legislations and the human rights of a married girl child. Being purposive and harmonious constructionists, we are of opinion that this is the only pragmatic option available. Therefore, we are left with absolutely no other option but to harmonize the system of laws relating to children and require Exception 2 to [Section 375](#) of the IPC to now be meaningfully read as: "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape." It is only through this reading that the intent of social justice to the married girl child and the constitutional vision of the framers of our Constitution can be preserved and protected and perhaps given impetus. "

8. In the above concurrent judgment, Justice Deepak Gupta at para No. 79 has observed as under :-

"79. Another aspect of the matter is that the POSCO was enacted by Parliament in the year 2012 and it came into force on 14th November, 2012. Certain amendments were made by [Criminal Law Amendment Act](#) of 2013, whereby [Section 42](#) and [Section 42A](#), which have been enumerated above, were added. It would be pertinent to note that these amendments in POSCO were brought by the same Amendment Act by which [Section 375](#), [Section 376](#) and other sections of [IPC](#) relating to crimes against women were amended. The definition of rape was enlarged and the punishment under [Section 375](#) IPC was made much more severe. [Section 42](#) of POSCO, as mentioned above, makes it clear that where an offence is punishable, both under POSCO and also under [IPC](#), then the offender, if found guilty of such offence, is liable to be punished under that Act, which provides for more severe punishment. This is against the traditional concept of criminal jurisprudence that if two punishments are provided, then the benefit of the lower

punishment should be given to the offender. The legislature knowingly introduced [Section 42](#) of POCSO to protect the interests of the child. As the objects and reasons of the POCSO show, this Act was enacted as a special provision for protection of children, with a view to ensure that children of tender age are not abused during their childhood and youth. These children were to be protected from exploitation and given facilities to develop in a healthy manner. When a girl is married at the age of 15 years, it is not only her human right of choice, which is violated. She is also deprived of having an education; she is deprived of leading a youthful life. Early marriage and consummation of child marriage affects the health of the girl child. All these ill effects of early marriage have been recognised by the Government of India in its own documents, referred to hereinabove. "

9. In the judgment cited supra at para 88, the Hon'ble Supreme Court has held that exception 2 to Section 375 IPC in so far as it relates to a girl child below 18 years is liable to be struck down. Thus, the Hon'ble Supreme Court has given primacy to POSCO Act and has held that consent of minor child below 18 years is irrelevant for all purposes in all circumstances i.e. even in matrimonial relations.

10. In POCSO offence, although the age of minor remains irrelevant, while considering application for grant of bail, the court may also look at some other factors as submitted by Mr. A.R. Joshi, the learned amicus curiae. In this regard, it is relevant to note the judgment of the Hon'ble Supreme Court in the case of **Sanjay Chandra Vs. CBI** reported in [2011] 13 (ADDL) S.C.R. 309 wherein at para 21 has observed as under :-

"21) The concept and philosophy of bail was discussed by this Court in [Vaman Narain Ghiya v. State of Rajasthan](#), (2009) 2 SCC 281, thus:

"6. "Bail" remains an undefined term in [CrPC](#). Nowhere else has the term been statutorily defined. Conceptually, it continues to be understood as a right for assertion of freedom against the State imposing restraints. Since the UN Declaration of Human Rights of 1948, to which India is

a signatory, the concept of bail has found a place within the scope of human rights. The dictionary meaning of the expression "bail" denotes a security for appearance of a prisoner for his release. Etymologically, the word is derived from an old French verb "bailer" which means to "give" or "to deliver", although another view is that its derivation is from the Latin term "baiulare", meaning "to bear a burden". Bail is a conditional liberty. Stroud's Judicial Dictionary (4th Edn., 1971) spells out certain other details. It states:

"... when a man is taken or arrested for felony, suspicion of felony, indicted of felony, or any such case, so that he is restrained of his liberty. And, being by law bailable, offereth surety to those which have authority to bail him, which sureties are bound for him to the King's use in a certain sums of money, or body for body, that he shall appear before the justices of goal delivery at the next sessions, etc. Then upon the bonds of these sureties, as is aforesaid, he is bailed--that is to say, set at liberty until the day appointed for his appearance."

Bail may thus be regarded as a mechanism whereby the State devolutes upon the community the function of securing the presence of the prisoners, and at the same time involves participation of the community in administration of justice."

11. In para 16 and 17 of the aforesaid case of **Sanjay Chandra**, the Hon'ble Supreme Court has also observed as under :-

"16) This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under [Article 21](#) of the Constitution. In the case of [State of Rajasthan v. Balchand](#), (1977) 4 SCC 308, this Court opined:

"2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.

3. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of bail. So also the heinousness of the crime. Even so, the record of the petitioner in this case is that, while he has been on bail throughout in the trial court and he was released after the judgment of the High Court, there is nothing to suggest that he has abused the trust placed in him by the court; his social circumstances also are not so unfavourable in the sense of his being a desperate character or unsocial element who is likely to betray the confidence that the court may place in him to turn up to take justice at the hands of the court. He is stated to be a young man of 27 years with a family to maintain. The circumstances and the social milieu do not militate against the petitioner being granted bail at this stage. At the same time any possibility of the absconsion or evasion or other abuse can be taken care of by a direction that the petitioner will report himself before the police station at Baren once every fortnight."

(17) In the case of **Gudikanti Narasimhulu v. Public Prosecutor**, (1978) 1 SCC 240, V.R. Krishna Iyer, J., sitting as Chamber Judge, enunciated the principles of bail thus:

"3. What, then, is "judicial discretion" in this bail context? In the elegant words of Benjamin Cardozo:

"The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life". Wide enough in all conscience is the field of discretion that remains."

Even so it is useful to notice the tart terms of Lord Camden that

"the discretion of a Judge is the law of tyrants: it is always unknown, it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best, it is oftentimes caprice; in the worst, it is every vice,

folly and passion to which human nature is liable...."

Perhaps, this is an overly simplistic statement and we must remember the constitutional focus in [Articles 21](#) and [19](#) before following diffuse observations and practices in the English system. Even in England there is a growing awareness that the working of the bail system requires a second look from the point of view of correct legal criteria and sound principles, as has been pointed out by Dr Bottomley."

12. The Hon'ble Supreme Court in the case of **Sanjay Chandra** supra has primarily held that bail should be the rule and during pendency of the trial the liberty should not be curtailed unless there are circumstances suggestive of applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating the witnesses. Considering the gravity of the offence involved is likely to induce the accused to avoid the course of justice, so also heinousness of the crime. While dealing with the bail, the court should exercise judicial discretion based on well settled principles of law and the concern of the court should be to secure the presence of the applicant, who is seeking bail. Thus, the court may take into consideration antecedents of the applicant to find whether he has bad record particularly the record which suggests that he is likely to commit serious offence while on bail.

13. Having considering the law on the subject of grant of bail as above, although the age of consent of minor is immaterial for the offence under POSCO Act, the grant of bail would be at the discretion of the Court to be exercised on well settled principles as noted above. Exercise of the discretionary power of the Court is not an uncontrolled power. The Court may exercise the power more liberally when investigation in the matter is complete and that the possibility of the applicant from fleeing from justice is remote, when he has no antecedents and he may not possibly interfere with the justice.

14. In the case of **X (Minor)** cited supra, the Hon'ble Supreme Court was dealing with the case of minor girl of 13 year of age and there exploitation at the hands of the applicant by use of some material which was in possession of applicant therein and grant of bail was challenged by the minor.

15. Coming to the facts of the case, it is to be seen that the investigation is complete, the applicant is behind bars from 9.8.2024, there are no antecedents against him and that trial would take much time to conclude, the applicant is prima-facie not a threat to the victim or society in general and conditions can be imposed so as to keep him away and ensure that he does not influence the victim. In the instant case, the minor has consented to grant bail as can be seen from the record. Considering these aspect of the matter, bail can be granted to the applicant.

16. In view of the above, the application is allowed in the following terms :

- a] The applicant shall be released on bail in connection with Crime No. 220/2024 dated 8.6.2024 registered with Shillegaon Police Station, District Aurangabad for the offences punishable under sections 376, 376(2)(N), 376(3), 366-A, 363 of I.P.C. and sections 4, 6, 8, 12, 17 of POCSO Act, on furnishing PR bond of Rs.20,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.
- b] The applicant, upon being released on bail, shall not contact the informant or witnesses, in any manner whatsoever, during the pendency of the trial.
- c] The applicant shall co-operate with the trial Court and he shall attend each and every date, unless exempted by the Court.
- d] The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses and other persons concerned with the case.

e] The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

17. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled.

18. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

19. The application stands disposed of.

20. This Court places on record its sincere appreciation for the valuable assistance rendered by Mr. Amol Ram Joshi, learned counsel, during the course of this proceedings.

21. High Court Legal Services Sub-Committee, Aurangabad shall pay fees of Rs.10,000/- to the learned counsel appointed for respondent No. 2.

[ARUN R. PEDNEKER, J.]

SSC/