



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

25 BAIL APPLICATION NO. 884 OF 2025

Gajanan Istari Bontawar

VERSUS

The State of Maharashtra And Another

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Advocate for Applicant : Mr. Gajanan N. Tirthkar

APP for Respondent No1: Mr. D.J. Patil

Advocate for Respondent No.2 : Mr. D.S. Ingole

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 2nd SEPTEMBER, 2025.

PER COURT :-

1. This is an application for granting bail under section 439 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") in connection with crime No. 107 of 2024 registered with Sindhkhed police station, District Nanded for the offences punishable under Sections 376, 376(2)(n) of the I.P.C. and under Section 4 and 8 of the Protection of Children from Sexual Offences Act, 2012.

2. The informant, who was 16 years old girl at the relevant time, averred in the report that she is a student of 10th standard. The applicant was cultivating the land of her family on Batai/crop sharing basis and therefore, he was frequently visiting to her house. The friendship was developed between them. On 5.6.2024, at about 2.00 p.m. when nobody was present in the house of applicant, he called

her there and committed sexual intercourse with her. Thereafter, the applicant threatened her that he will tell about the same in the entire village and called her for 3 to 4 times at his house and committed sexual intercourse there. The informant was conceived. Her parents brought a kit for determination of pregnancy. The test was conducted and it was found that the informant is pregnant. She was admitted in the Government hospital on 30.8.2024. While she was in the hospital, the report was lodged.

3. Learned advocate for the applicant submitted that it is not case of prosecution that it was forceful sexual intercourse. The applicant is behind bars since one and half year. The applicant has no criminal antecedents. He is ready to abide all conditions. He submitted that the informant is though child in legal sense, she is having age of understanding. The applicant has roots in the society. He will not flee away from the trial and there is no history of physical assault at the time alleged sexual intercourse. He submitted to release the applicant on bail. He is relying upon the following authorities, in which the law is laid down as under:-

- i) Sunil Mahadev Patil vs. State of Maharashtra, 2015 SCC OnLine Bom 6204, in which in para, it is observed that:-

"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.”

- ii) Mohd. Ajaan Khan v. State of Maharashtra, 2025 SCC OnLine Bom 308, in which in para 14, it is observed that:-

“14. The case appears to be consensual in nature that had come to the knowledge of her mother upon prosecutrix becoming pregnant not once, but twice. Applicant has made out a strong case for grant of bail since a boy and girl of similar age group involved in a long standing love relationship by consensus does not make it an offense of a nature to justify his custody, the Applicant is not a sexual predator but a young

person who was involved in a consensual relationship which is admitted by the prosecutrix. Both the parties were of the age to have a reasonable understanding of the import of their conduct and despite that had engaged in the said act over a substantial period of time.”

4. Learned A.P.P. for the State and learned advocate of respondent No.2 strongly opposed the application and submitted that the applicant is involved in serious crime, which is an antisocial crime. There is strong medical evidence of pregnancy and the pregnancy of the victim is terminated. If the applicant is released on bail, he will certainly pressurize the victim and the witnesses and tamper with the evidence. At the most, the trial can be expedited. It is lastly prayed to reject the application.

5. Perused the charge sheet, particularly the report and the statements of witnesses. Learned A.P.P. pointed out the D.N.A. report, which is positive and matching the fatherhood of the applicant. As per the ratio laid down by this Court in the case of Sunil Patil vs. State of Maharashtra and Mohd. Ajaan Khan vs. State of Maharashtra (supra), though the victim is child but she is having maturity i.e. age of understanding and there are no alleged history of physical assault at the time of alleged incidents. The applicant is unmarried. Considering all these aspects and the peculiar facts of the case as well as the law laid down by this Court in the aforesaid

cases, the applicant can be released on bail on certain conditions.
Hence, the following order.

O R D E R

- I. Application is allowed.
- II. The applicant in connection with crime No. 107 of 2024 registered with Sindhkhed police station, District Nanded for the offences punishable under Sections 376, 376(2)(n) of the I.P.C. and under Section 4 and 8 of the Protection of Children from Sexual Offences Act, 2012, be released on bail on furnishing personal bond of Rs.50,000/- with one surety of the like amount on following conditions:-
 - a) The applicant shall not tamper with the prosecution evidence and shall not pressurize the witnesses, in any manner.
 - b) The applicant shall not enter in village Daheli, Tq. Kinwat, District Nanded till the conclusion of trial.
6. Since Mr. Ingole, learned advocate is appointed to prosecute the cause of the respondent No.2, his fees be paid as per the schedule of fees maintained by the High Court Legal Services, Sub-Committee, Aurangabad.

(SANJAY A. DESHMUKH, J.)