



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

937 BAIL APPLICATION NO. 1008 OF 2025

Shubham Ashok Palande

VERSUS

The State Of Maharashtra And Another

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Advocate for Applicant : Mr. Wakale Vijay Shivaji

APP for Respondents-State: Mr. N. B. Patil

Advocate for Respondent No.2 : Ms. Sayali Tekale (Appointed)

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CORAM : ARUN R. PEDNEKER, J.

Dated : August 05, 2025.

PER COURT :-

1. Heard the learned Counsel for the applicant and the learned APP for the respondent-State.
2. The applicant seeks bail in connection with FIR No. 0071/2025 dated 12.02.2025, registered with Nagar Taluka Police Station, District Ahmednagar, for the offences punishable under Sections 143(3) and 3(5) of the Bharatiya Nyaya Sanhita, 2023; Sections 3, 4, 5, 6, and 7 of the Prevention of Immoral Traffic Act, 1956 (PITA); and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO).
3. The learned Counsel for the applicant submits that a raid was conducted at Hotel Sai, where certain women were allegedly found engaging in prostitution. The applicant was employed as the Manager of the hotel at the relevant time. The owner of the hotel has already been granted anticipatory bail. The applicant was arrested on 12/02/2025 and has remained in custody since then.

4. It is further submitted that all the persons allegedly involved in the illegal activities are adults, and they were acting on their own accord. The applicant had no active role other than being employed as the Manager. Therefore, it is prayed that the applicant be released on bail.

5. On the other hand, the learned APP and the learned appointed Counsel for respondent No. 2 submit that one of the victims underwent ossification testing, which revealed that her age was found to be more than 15 years but less than 17 years. Accordingly, the provisions of the POCSO Act were invoked against the applicant.

6. Having considered the rival submissions, the material on record indicates that the applicant was working as the Manager of Hotel Sai and was apprehended while allegedly accepting money from a dummy customer for the purposes of prostitution. It appears that all the individuals involved, except one, are major. In respect of the individual stated to be a minor, reliance is placed by the learned Counsel for the applicant on a judgment of the Hon'ble Delhi High Court in case of ***Court on its Own Motion Versus State of NCT of Delhi, reported in 2024 SCC OnLine Del 4484***, which holds that the margin of error in ossification tests must be considered, and a benefit of two years may be given in such cases. As such, paragraph No.46 of the said Judgment is reproduced below : -

"46. As an upshot of our foregoing discussion, the Reference is answered as under : -

(i) Whether in POCSO cases, the Court is required to consider the lower

side of the age estimation report, or the upper side of the age estimation report of a victim in cases where the age of the victim is proved through bone age ossification test ?

Ans : In such cases of sexual assault, wherever, the court is called upon to determine the age of victim based on 'bone age ossification report', the upper age given in 'reference range' be considered as age of the victim.

(ii) Whether the principle of 'margin of error' is to be applicable or not in cases under the POCSO Act where the age of a victim is to be proved through bone age ossification test.

Ans: Yes. The margin of error of two years is further required to be applied."

7. The Aadhar Card of the said victim reflects her age as 21 years. Hence, there is no conclusive evidence on record to establish that the said individual is a minor. In any case, the applicant has no antecedents. The maximum punishment under the other applicable provisions, except for the POCSO Act, is seven years.

8. Considering the overall circumstances, including the applicant's continued custody, absence of prior criminal record, and inconclusive proof regarding the age of the alleged minor, this Court is inclined to grant bail.

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

a] The applicant shall be released on bail in connection with FIR No. 0071/2025 dated 12/02/2025, registered with Nagar Taluka Police Station, District Ahmednagar, for the offences punishable under Sections 143(3), 3(5) of the Bharatiya Nyaya Sanhita, 2023; Sections 3 to 7 of the PITA Act; and Section 4 of the POCSO Act, on furnishing a PR bond

of Rs.30,000/- with one or two sureties in the like amount, to the satisfaction of the Trial Court.

b] Upon release, the applicant shall not, in any manner, contact the informant during the pendency of the trial.

c] The applicant shall co-operate with the Trial Court and shall attend all hearings unless specifically exempted.

d] The applicant shall not tamper with the prosecution evidence nor influence the informant, witnesses, or any persons concerned with the case.

e] Upon release, the applicant shall furnish his current contact number and residential address to the Trial Court and shall update the same in case of any change.

10. Needless to state, in the event of any violation of the above conditions, the bail granted to the applicant shall be liable to be cancelled. It is further clarified that the observations made in this order are limited to the consideration of the present bail application, and the Trial Court shall proceed independently on merits without being influenced by these observations.

11. The fees of the appointed advocate for respondent No. 2 are quantified at Rs.10,000/- (Rupees Ten Thousand only), to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

12. The application stands disposed of.

(ARUN R. PEDNEKER, J.)

vj gawade/-.