



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

BAIL APPLICATION NO.1086 OF 2025

Dhamma Chindha Nikam

VERSUS

The State of Maharashtra

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Advocate for Applicant : Mr. K. A. Ingle

APP for Respondent-State : Mr. S. K. Shirse

Advocate for Respondent No.2 : Ms. Sarita Gaikwad (Appointed)

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CORAM : ARUN R. PEDNEKER, J.

Dated : July 22, 2025.

ORDER : -

1. Heard learned counsel for the applicant and the learned APP for the respondent-State.
2. The applicant is seeking bail as he was arrested in connection with FIR No.281/2024, registered with Mukundvadi Police Station, Aurangabad, District Aurangabad, for the offences punishable under sections 376(2)(n)(f), 376(A), 376(B), 354(B) and 506 of Indian Penal Code and under Section 4, 6, 8 and 10 of the POCSO Act.
3. It is the case of the prosecution, as can be seen from the FIR registered by the mother of the victim, that the applicant and the informant are husband and wife. They have one son aged 8 years and one daughter aged 5 years. Since their marriage in 2015, both the applicant and the informant have been working as labourers.
4. Initially, after marriage they were residing in Nashik. However, due to the informant's dissatisfaction with the applicant's behaviour, she, along with

her husband and children, left Nashik in May 2023 and shifted to her mother's house at Chetana Nagar, Harsul. In June 2023, they rented a room and began residing at Mukundwadi, Galli No. 9, Police Colony, Chhatrapati Sambhaji Nagar.

5. The informant states that at the end of January 2024, while she was at home, she sensed someone moving behind her. When she turned around, she noticed that her daughter was asleep and her husband (the applicant) was awake and appeared somewhat nervous. At that time, she became suspicious about her husband, however, she chose to ignore it. It is further stated that on 07/06/2024 at about 11:00 a.m., while she was watching videos related to good touch and bad touch on a YouTube channel, her 5-year-old daughter happened to see the video. On watching it, the child became frightened and suddenly started crying. When the informant took her daughter into confidence and asked why she was crying, the daughter stated that the applicant/accused had inappropriately touched her. She explained that sometimes he would hold her close, sometimes hug her, and sometimes, even after she said no, he would remove her clothes and touch her chest. The informant further stated that when she confronted her husband about this, he avoided answering.

6. Thereafter, the applicant called his mother and left with her to Shendurni, Taluka Jamner, District Jalgaon. The informant then disclosed

the incident to her mother and other close relatives. She states that when she, along with her relatives, visited the applicant's house and confronted him in the presence of her family members regarding the inappropriate behaviour, the applicant admitted that he had inappropriately touched their daughter and assured them that he would not repeat such conduct. At that time, the informant refrained from lodging a complaint out of fear.

7. However, she remained disturbed and emotionally distressed about the incident. Ultimately, after about a month, she filed the complaint and registered the FIR on 09/07/2024.

8. In pursuance of the complaint, the applicant was arrested on 25/08/2024. The investigation has been completed and the charge-sheet was filed on 06/09/2024. The bail application filed before the Trial Court came to be rejected, and therefore, the present application is filed by the applicant/accused.

9. Statement of the victim was recorded by police in presence of informant on 26/07/2024, and the victim's statement under Section 183 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) was recorded by the Magistrate in presence of the informant on 02/08/2024.

10. The learned Counsel for the applicant submitted that *prima facie* this

is a case of false implication by the informant, who has allegedly tutored the child. It is contended that the statement of the victim has consistently changed from the time of registration of the FIR to her statement under Section 183 of the BNSS. It is further submitted that the victim resides with the informant, and the entire version appears to be a result of coaching by the mother due to matrimonial discord.

11. It is argued that there is no eye-witness to the alleged incidents. The applicant and the informant, along with their children, were residing in a small rented room. At the time of the alleged incident, the elder son and the informant were also present in the house. The victim, being of tender age, lacks the capacity to understand the nature of the incident and has allegedly been tutored by the mother.

12. The learned Counsel pointed out that it was only after the recording of the victim's statement under Section 183 of the BNSS that the offence of penetrative sexual assault came to be added against the applicant.

13. *Per contra*, the learned appointed Counsel for respondent No.2 submits that the bail be refused, as the applicant has inappropriately touched and had committed penetrative sexual assault on the minor girl, who is his own daughter. It is submitted that the applicant does not deserve to be released on bail, and his application be rejected.

14. The learned APP submits that, considering the gravity of the offence, more particularly since the offences relate to serious charges punishable with rigorous imprisonment for a term of not less than 20 years, extending up to life imprisonment, the application be rejected.

15. Having heard the Counsel for the respective parties, it is evident that the victim is a five-year-old child and daughter of the applicant. The informant learned about the incidents when her child saw videos about "good touch and bad touch," while her mother was watching the video. Subsequently, the victim narrated to her mother that the father (the applicant) was engaging in "bad touch," specifically mentioning that the applicant touched her body, kissed her, and hugged her.

16. It is noted that the applicant left the company of the child and the mother on 07/06/2024. Thereafter, the informant (mother) and her family members went to the applicant's house in Shendurni, Taluka Jamner, District Jalgaon, and confronted him. The applicant allegedly accepted having committed the "bad touch" on his daughter and the First Information Report (FIR) was registered after one month.

17. Following the registration of the FIR, the police recorded the child's statement on 26/07/2024 in presence of the informant. During this

recording, the child was asked several questions in the presence of her mother. When asked whether she liked her mother or father and with whom she resided, she stated she liked her mother and resided with her. When questioned why she did not like her father, she replied that she did not know. Asked directly if her father did "bad touch" to her, she said "yes." However, when further questioned about what her father did that was "bad," she stated she "cannot say." Asked if she had anything else to say about her father, she said "no."

18. The victim's second statement was recorded under Section 183 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) by the Magistrate on 02/08/2024. During this period, the victim remained in the custody of the informant (mother). The victim's statement before the Magistrate contained a detailed paragraph. She has given graphic details of penetrative sexual assault and stated that the incidents have taken place five times. The details are not reproduced here. She mentioned informing her mother about this "bad touch" after learning about it from her.

19. It is significant to note that, the victim in her police statement recorded in the presence of her mother, the victim did not mention anything about penetrative sexual assault. Although the FIR was registered more than a month after the alleged incidents, there is still no reference to penetrative sexual assault. The Magistrate's statement, recorded while the

child was still in the mother's custody, contains a complete and distinct story describing penetration and sexual assault with details. This statement under Section 183 of BNSS appears to in detail making out the specific ingredients of penetrative sexual assault on a child.

20. The argument raised by the learned Counsel for the applicant cannot be entirely dismissed at this stage. While the child witness is legally a competent witness, extreme caution is required regarding the possibility of tutoring, especially given her age (five years) and the fact she has been in the sole custody of the mother for over two months. The child may not fully comprehend the nature of the offense, yet the statement before the Magistrate describes the offense of penetration with precision. This prima facie suggests the possibility of tutoring.

21. Considering the material placed on record, particularly the victim's inconsistent statements and the delay in lodging the First Information Report wherein there is no mention of penetrative sexual assault by the informant, this Court is of the opinion that the matter requires deeper scrutiny during trial. It is not in dispute that the incident came to light after the child watched an educational video, and even thereafter, the FIR was registered after a delay of nearly one month. The initial statement of the child made before the police is vague and without a single utterance of penetrative sexual assault, while the statement recorded before the

Magistrate under Section 183 of the BNSS, though detailed, was made while the child continued to reside solely with the informant. The possibility of tutoring cannot be entirely ruled out at this stage, especially in the backdrop of matrimonial discord between the applicant and the informant. The matrimonial dispute is apparent in the FIR that the informant and her family including husband had left Jalgaon and moved to Aurangabad in 2023 on account of the informant not liking the behaviour of the applicant. However, no incident of sexual misbehaviour is mentioned prior to 2023. The statement of the applicant that informant did not want to reside in Jalgaon with the applicant's mother prima facie cannot be ruled out. It is also significant that the applicant has no criminal antecedents. The applicant is in custody since 25/08/2024. In such circumstances, a case for grant of bail is made out. Hence, the applicant is entitled to be released on bail, subject to appropriate conditions to ensure his availability during trial and to prevent any tampering with prosecution evidence or influencing of witnesses.

22. 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.281/2024, registered with Mukundvadi Police Station, Aurangabad, District Aurangabad, for the offences punishable under sections 376(2)(n)(f), 376(A), 376(B), 354(B) and 506 of Indian Penal Code and under Section 4, 6, 8 and 10 of the POCSO Act, on

furnishing PR bond of Rs.25,000/- 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, 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 trial 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.

f] The applicant shall not enter Chhatrapati Sambhajnagar (Aurangabad) except on the date of trial, one day before the trial date, and one day after the trial.

23. 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. 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.

24. Fees of the appointed advocate is quantified at Rs.10,000/- (in words rupees ten thousand only), to be paid by High Court Legal Services Sub-Committee, Aurangabad

24. The application stands disposed of.

(ARUN R. PEDNEKER, J.)

vj gawade/-.