



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1275 OF 2025

ZAKIR BABAN ALIAS KAYYUM SHAIKH

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

- Mr. S. G. Bobade, Advocate for Applicant
- Ms. D. S. Jape, APP for Respondent-State

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CORAM : MEHROZ K. PATHAN, J.

DATED : 04.11.2025

PER COURT :

1. The applicant has filed the present application seeking regular bail in Crime No. 326 of 2024, registered at Vaijapur Police Station, Tq. Vaijapur, Dist. Aurangabad for the offences punishable under Sections 376(2)(j), 376(2)(n), 452, 506 of the Indian Penal Code, 1860 and Sections 4, 6 8 and 12 of the POCSO Act, 2012.

2. The submission of the learned counsel for the applicant is that though the victim was a minor, the applicant had taken the victim, with her consent and that any sexual intercourse, if committed, was with consent of the minor victim.

3. Mr. Bobade, learned counsel for the applicant places reliance upon the judgment of the Hon'ble Supreme Court in *S. Varadarajan V*

State of Madras; 1965 (2) Cri.L.J. 33, and states that the benefit shall be given to the applicant even assuming the victim to be minor without admitting, as the said age of 15 to 18 has been found to be an age of understanding the consequences. The applicant has suffered enough incarceration as he was arrested on 15.05.2024 and is behind bars since last more than one year, the applicant may be released on bail as the applicant undertakes not to tamper with the prosecution evidence or threaten the prosecutrix.

4. It is further submission of the counsel for the applicant that the consent of the prosecutrix could very well be corroborated by the fact that the prosecutrix and also her mother have turned hostile in their testimony recorded by the learned trial Court. He places on record the copy of the depositions of both the witnesses, which are marked as 'x' and 'y' for identification and taken on record. It is the submission of the learned counsel for applicant that the applicant is in custody since 15.05.2024 and has suffered enough detention. It is also submitted that the victim girl was also married immediately after lodging of FIR, and therefore, her age as stated by the prosecution that she is 15 years old is also doubtful. The applicant therefore, prays for grant of regular bail.

5. As against this, the learned APP, Ms. Jape vehemently opposes the application on the ground that the applicant, a married man aged about 33 years, sexually exploited a minor girl aged 15 years and 3 months old. The offence is against society. Even though the prosecutrix or her mother have turned hostile, the applicant shall not be released on bail. She further relies upon the judgment of the Hon'ble Supreme Court in the case of State of *Maharashtra and Anr. Vs. Pappu @ Suresh Budharmal Kalani; SLP (Cri.) No. 2375 of 2014*, to show that witnesses turning hostile may not be a ground for grant of bail.

6. The learned APP further submits that the DNA report also establishes the paternity of the fetus aborted from the prosecutrix, and as such, there is every likelihood that the applicant may be convicted for the offences of rape, which is punishable with imprisonment for the remainder of life. She further submits that the statement under Section 164 Cr.PC. of the prosecutrix also corroborates her version of the complainant in the FIR.

7. I have gone through the entire evidence collected by the prosecution, which is culminated into filing of the charge-sheet. The applicant was arrested on 15.05.2024 and on the charge of wrongfully restraining the minor victim girl and committing the

forcible sexual intercourse with the victim, who is stated to be 15 years old. As per the prosecution, the date of birth is 03.10.2008, and the date of offence is 18.01.2024 to 21.06.2024. The trial had already commenced and it could be seen from the testimonies of the mother and the prosecutrix that they have resiled from their earlier statements, the consent of the minor victim girl is not relevant.

8. In view of the fact that the applicant has already suffered detention from 15.05.2024, the apprehensions expressed by the learned APP that the victim may threaten the prosecutrix or her family members, can very well be taken care of by imposing stringent conditions upon the applicant. Hence, I pass the following order:-

ORDER

- A) The applicant - ZAKIR BABAN ALIAS KAYYUM SHAIKH, in crime No. 326 of 2024 registered at Vaijapur Police Station, Tq. Vaijapur, Dist. Aurangabad for the offences punishable under Sections 376(2)(i), 376(2)(n), 452, 506 of the Indian Penal Code and Sections 4, 6 8 and 12 of the POCSO Act, 2012, shall be released on bail on furnishing PR Bond of Rs. 50,000/- with one or two sureties in the like amount.
- B) The applicants shall not threaten or influence the prosecutrix or her family members, or any witness, nor tamper with the prosecution evidence in any manner. A single incident of such conduct shall entail cancellation of bail.
- C) The applicant shall attend the trial without fail and may seek exemption only in case of genuine emergency.

- D)** The applicant is directed not to enter the limits of Taluka Vaijapur, Dist. Aurangabad. Any single breach of this condition shall entitle the prosecution to seek cancellation of bail.
- E)** The applicants shall also cooperate with the investigation and produce all relevant documents as may be sought by the Investigating Officer for the purpose of completing the investigation.
- F)** The applicant shall furnish his residential address, contact number, and copies of his Aadhaar / PAN Cards to the Investigating Officer, and shall also provide the names, addresses, and contact numbers of his close relatives for the purpose of verification.
- 9.** The application is accordingly allowed on the aforesaid terms.

(MEHROZ K. PATHAN, J.)