



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1545 OF 2025

Shaikh Sohel s/o. Shaikh Khalil  
versus  
The State of Maharashtra and another.

..  
Mr. Shaikh Kayyum Najir, Advocate for the applicant,  
Mr. A.R. Borulkar, Advocate (appointed) for respondent No.2.  
Mr. V.M. Kagne, APP for respondent State.

CORAM : MEHROZ K. PATHAN, J.

RESERVED ON : 13<sup>th</sup> November, 2025  
PRONOUNCED ON : 24<sup>th</sup> November, 2025.

P.C. :-

1] The applicant is seeking his release on regular bail in connection with Crime No. 95 of 2025 registered with Sonpeth Police Station, Dist. Parbhani for the offences under Sections 137(2), 64, 65(1), 3(5) of BNS 2023 and under Sections 46(L), 8 and 12 of the POCSO Act.

2] The complainant Maruti Pisal has filed complaint that his daughter, minor victim girl aged 15 years was missing from home. They made search of the victim, however, she could not be found. They inquired about the missing girl in the neighbourhood, however, no information was received. As such, they got confirmed that an unknown person has kidnapped the minor victim girl. It is stated that after having dinner on 5.4.2025 at about 11.00 a.m, till 6.4.2025 01.00 a.m. the girl was kidnapped by some unknown persons.

3] It is the submission of learned counsel for the applicant that

there is variance in the statement recorded by the I.O. and the victim recorded under Section 181 of BNS and the statement under Section 183 of BNS before the learned Magistrate. There are no eye witnesses to the incident. Moreover, it is the submission of learned counsel for applicant that complainant's daughter was 17 years of age at the time of incident, which is considered to be the age of understanding the consequences of the act. As such, the victim was having a consensual relationship with the applicant, who is also of young age. Therefore, the daughter of informant had departed with the applicant as per her own will and as such, the applicant is entitled for bail in view of the judgment passed by this Court in the matter of ***Sunil Mahadeo Patil vs. State of Maharashtra. 2015 SCC Online Bomay 6204.***

4] As against this, the learned APP submits that the offence is serious in nature. The girl has been made to undergo forcible sexual intercourse, statement under Section 181 and 183 of BNS of the victim would be sufficient enough to implicate the role of the applicant. The offence is of serious nature. The applicant may not be released on bail, even though, there is charge sheet filed against the applicant, there is an apprehension that the applicant may flee away from ends of justice and may pressurize the prosecution witnesses and cause prejudice to the prosecution case.

5] I have gone through the charge sheet which is filed against the present applicant and the statement of the victim minor girl. The victim girl is aged about 17 years, appears to have left the company of her parents with her son. The consent of the minor girl is immaterial, however, the Division Bench of this Court in its judgment in the matter of Sunil Patil (cited supra) was pleased to observe as under :-

*“7. In the case of S. Varadarajan (supra) though the age of consent though as per law was 18 years, when the girl eloped with the accused, she was approximately 17 years and 9 months old. The Hon’ble Supreme Court in the case of S. Varadarajan has distinguished Section 361 on the point of taking from the guardian or enticing the girl and the girl herself leaving the house of the parents of her own and accused allowing her to be in his company and has held that it not a case of rape. In the case of S. Varadarajan, the matter was finally heard and the accused was convicted. In appeal, the decision of the Hon’ble Supreme Court can be culled out that if a girl takes initiative or she is active in taking decision of going away with the boy and she understands the meaning of man-woman relationship and of marriage, then the rigor of offence is reduced.*

*8. It is to be noted that the case of S. Varadarajan was decided in the year 1967 when the women were not enjoying the freedom which today the women have. Albeit the Hon’ble Supreme Court then has taken a pragmatic view and has acquitted Varadarajan. Now we come across such cases everyday. If a girl is a minor between the age group of 15 to 18 years and if it can be safely inferred that her consent was obvious, then it is a mitigating circumstance. Some trial Courts dealing with such Bail Applications, especially after Nirbhaya case, started taking a strict approach and the accused are denied the bail only on the ground that the prosecutrix being minor below 18 years, her consent is immaterial, therefore, in the case of rape on such minor, no bail can be granted. This is a matter of concern.”*

This Court was therefore, pleased to lay down the conditions for grant of bail in such matters.

6] Perusal of Section 181 and 183 of the BNS would show that there is serious discrepancy in the statement of the victim. The investigation papers in respect of examination of victim girl, i.e. provisional diagnosis column does not show any signs of forcible sexual

intercourse or use of force as opined by the Doctor conducting the examination. The column of injury to the Hymen is blank. There is a total variance in the statement of victim under Section 181 and 183 of BNS. However, these are matters to be evaluated while conducting trial. The allegations show that applicant had made a demand for sexual intercourse with the victim. However, the victim has refused for intercourse and the applicant thereafter did not commit sexual intercourse.

7] Thus, looking to the status of investigation and also statement made by the victim recorded under Sections 181 and 183 of BNS and also considering the judgment of this Court in the matter of Sunil Patil (supra), I am inclined to release the applicant on bail, however, on following conditions. Hence, the following order :-

[I] The application is allowed ;

[ii] The applicant Shaikh Sohel s/o. Shaikh Khalil be released on bail, on furnishing P.B. and S.B. in the sum of Rs. 50,000, in connection with Crime No. 95 of 2025 registered with Sonpeth Police Station, Dist. Parbhani for the offences under Sections 137(2), 64, 65(1), 3(5) of BNS 2023 and under Sections 46(L), 8 and 12 of the POCSO Act.

on the following conditions :-

[iii] The applicant shall not tamper with the prosecution evidence; and shall not influence the witnesses.

[iv] The applicant shall not enter the limits of Sonpeth Taluka, till framing of charges.

[iv] The applicant shall attend the Police Station on every Thursday and Friday, till filing of charge sheet and shall attend the trial court on each and every date of trial, except in case of emergency, wherein, he would be required to seek

permission from the Superintendent of Police, Parbhani.

[v] The applicant shall furnish his Aadhar Card and Pan Card alongwith their present address and phone numbers and addresses of the applicant's two near relatives to the I.O.

[vi] The application is disposed of.

[vii] Fees of the counsel appointed counsel for the respondent No.2 is quantified at Rs. 10,000/- to be paid through the High Court Legal Services Sub-Committee, Aurangabad.

**[MEHROZ K. PATHAN]**  
**JUDGE.**

grt/-