



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

ANTICIPATORY BAIL APPLICATION NO. 1796 OF 2025

SANGHARSH YASHWANT GAWALI

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Garje Rahul Rajendra
Mr. U. R. Mirza

APP for Respondent/State : Mr. R.K. Ingole

Advocate for Respondent No.2 : Mrs. Shilpa Aurangabadkar
(appointed)

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CORAM : MEHROZ K. PATHAN, J.

DATE : 19th NOVEMBER 2025

PER COURT :

1. The Applicant has approached this Court, seeking anticipatory bail in connection with Crime No.386/2025 registered with Pundliknagar Police Station, Taluka and District Aurangabad for the offences punishable under Sections 137(2), 87, 74, 75 of Bharatiya Nyaya Sanhita, 2023 and Sections 8, 12 of the Protection of Children from Sexual Offences Act, 2012.

2. The case of the prosecution is that victim is aged 14 years and 6 months. It is alleged that victim went missing on 18.09.2025 and thus, complaint came to be filed by her father against unknown accused. Accordingly, crime came to be registered for the offence punishable under Section 137(2) of B.N.S. During investigation, victim was found and her statement came to be recorded in which

she disclosed that she knows the accused and on 18.09.2025, accused took her to Sai Tekdi where accused dragged and kissed her and thereby outraged her modesty. While they were returning to home, accused got knowledge that parents of victim came to know about them and thus, he forcibly took her to Pune to Aurangabad with sister of accused. Thereafter, maternal uncle of accused took her to the office of a Corporator and they called uncle of the victim and therefrom they came to the police station. As a result of it, Sections 87, 74 and 75 of B.N.S. and Sections 8 and 12 of the POCSO Act came to be added.

3. The learned Counsel for the Applicant submits that the Applicant is aged 22 years and the girl was running 15 years of age and there was consensual love relationship with the victim, therefore she had come alongwith the Applicant on her own will. The statement also does not show any sexual harassment meted out by the Applicant and therefore the Applicant may be released on bail.

4. As against this, the learned APP as well as the learned appointed Counsel vehemently oppose the present application on the ground that the victim is a minor girl aged about 15 years. It is submitted that the statement of the victim indicates that the Applicant has outraged the modesty of the minor girl and had taken her to Pune. Furthermore, when the FIR was lodged, the Applicant brought the victim back to this city. It is thereafter that the statement of the victim was recorded, wherein she narrated the entire incident

of the Applicant enticing the minor girl to leave the lawful guardianship of her parents. It is therefore submitted that this is not a case for grant of anticipatory bail.

5. I have gone through the investigation papers made available by the learned APP. After perusing the medical certificate as well as the statement of the victim recorded under Section 183 of the BNS, it is seen from the medical examination papers that the victim was not willing to give consent for medical examination. Moreover, the statement under Section 183 of the BNS indicates that there was no forcible sexual intercourse at the behest of the Applicant. The single bench of this Court in the judgment of **Sunil Mahadev Patil Vs. State of Maharashtra**, 2015 SCC OnLine Bom 6204, 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.”

6. Thus after taking into consideration the nature of the allegations, the age of the victim, the age of the Applicant and also the statement of the victim recorded under Section 183 of the BNS,, I am inclined to protect the Applicant. Hence the following order :

ORDER

(i) In the event of arrest of the Applicant - Sangharsh Yashwant Gawali in connection with Crime No.386/2025 registered with Pundliknagar Police Station, Taluka and District Aurangabad for the offences punishable under Sections 137(2), 87, 74, 75 of Bharatiya Nyaya Sanhita, 2023 and Sections 8, 12 of the Protection of Children from Sexual Offences Act, 2012, he be released on bail on furnishing P.R. bond of Rs.50,000/- (Rupees Fifty Thousand) with two solvent sureties in the like amount, on the following conditions :

(a) The Applicant shall not enter the jurisdiction of Pundliknagar Police Station, Aurangabad and Shivajinagar Police Station, Aurangabad, except as and when called by the Investigating Officer for attendance till framing of the charge.

(b) The Applicant is directed to attend the concerned police station and report to the Investigating Officer as and when called, until the filing of the charge-sheet.

(c) The Applicant shall not tamper with the prosecution evidence and shall not influence the witnesses.

(d) The Applicant shall submit his Aadhaar Card and PAN Card to the Investigating Officer, along with detailed addresses and phone numbers of himself and two close relatives.

(e) The Applicant shall attend the trial regularly except in emergency, he can seek exemption from the trial Court.

(f) Fees of the learned Counsel appointed to represent respondent no.2 is to be paid through the High Court Legal Services Sub-Committee, Aurangabad, as per Rules.

(ii) The application is allowed in the above terms and stands disposed of.

MEHROZ K. PATHAN
JUDGE

NAJEEB..