

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 1271 OF 2024

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Kunal Kashinath Thombare

... Applicant

V/s.

State of Maharashtra & Anr.

... Respondents

Mr. Raviraj Paramane a/w Deva Shinde, for the applicant.

Ms. Rajashree V. Newton, APP for the State – respondent No.1.

Mr. Sumedh Modak, for respondent No.2 (Appointed as Legal – Aid Counsel).

CORAM : AMIT BORKAR, J.

DATED : JULY 23, 2025

P.C.:

1. The present bail application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking his release on bail in connection with Crime Register No. 468 of 2023 registered with Padgha Police Station. The applicant stands charged for offences punishable under Sections 376(3) and 354(a) of the Indian Penal Code, 1860, which relate to rape of a woman under sixteen years of age and assault or criminal force to woman with intent to outrage her modesty, respectively. In addition to these charges under the Indian Penal Code, the provisions of Sections 4(2), 8, and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) have also been invoked against

the applicant.

2. According to the prosecution case as presented before this Court, the victim is a minor girl aged approximately 11 years and 4 months at the time of the alleged incident. The prosecution alleges that during the period from 24th July 2023 to 15th August 2023, the applicant established contact with the minor victim through a social media application, namely Snapchat. It is the case of the prosecution that the applicant, after establishing this contact through the digital platform, subsequently called the victim girl to meet him in person. The prosecution further alleges that upon meeting, the applicant committed sexual assault upon the minor victim. The matter came to light on 16th August 2023, when the victim's mother became aware of the said incident.

3. The learned Advocate appearing for the applicant has meticulously drawn the attention of this Court to the recorded statements of both the victim and her mother, including the crucial statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973, before the learned Magistrate. The learned counsel has emphatically submitted that upon careful perusal of these statements, none of them contain any specific allegations of penetrative sexual assault as defined under the POCSO Act. The learned Advocate has argued that based on the nature of allegations as they emerge from the recorded statements, the charges may prima facie attract only the provisions of Section 8 or Section 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012, for which the maximum prescribed punishment under the statute is imprisonment for a term of five

years. The learned counsel has further brought to the notice of this Court that the applicant has already undergone a substantial period of incarceration, having been in custody since his arrest on 16th August 2023, which amounts to more than two years of actual imprisonment. It has been submitted that the applicant is a first-time offender with no previous criminal antecedents or history of similar offences. The learned Advocate has also highlighted that on the date of the alleged incident, the applicant was approximately 21 years of age, indicating his relatively young age at the time of the commission of the alleged offence.

4. The learned Advocate representing the applicant has also specifically pointed out certain factual aspects of the case, including the narration provided by the victim's mother in her statement, which clearly indicate that the initial contact between the applicant and the victim was established through mutual interaction on a social media platform, namely Snapchat. The counsel has argued that this fact suggests that the contact was not entirely one-sided or predatory in nature, but rather involved mutual participation through digital communication. Based on these submissions and considering the prolonged incarceration already undergone by the applicant, the learned counsel has earnestly prayed before this Court that the applicant be granted the relief of bail with appropriate conditions as this Court may deem fit and proper in the circumstances of the case.

5. On the contrary, the learned Additional Public Prosecutor (APP) representing the State, along with the specially appointed Advocate representing the interests of the victim, have vehemently

opposed the grant of bail to the applicant. The prosecution has strongly submitted that the age of the victim, being approximately 11 years and 4 months on the date of the incident, is a crucial factor that cannot be overlooked while considering the bail application. The learned APP has acknowledged that while the victim may not have explicitly stated about penetrative sexual assault in her recorded statement, the subsequent developments in the case present a much more serious picture. The prosecution has brought to the attention of this Court the most significant and damaging evidence against the applicant, the confirmation of the victim's pregnancy, which has been established through her statement and is further corroborated by concrete medical evidence obtained during the course of investigation. The learned APP has argued that the pregnancy of an 11-year-old victim is itself conclusive proof of penetrative sexual assault, regardless of what may or may not have been specifically stated in the initial statements. Based on this crucial evidence of pregnancy supported by medical reports, the prosecution has submitted that the present bail application is wholly without merit and deserves to be rejected outright, as granting bail in such circumstances would not only be inappropriate but also contrary to the interests of justice and the protection of the victim.

6. Having heard the learned counsel for both parties and having perused the case diary and relevant materials on record, this Court proceeds to examine the merits of the present bail application in light of the established legal principles governing grant of bail in cases involving serious offences.

7. Upon careful examination of the allegations and the evidence on record, this Court observes that while the applicant has been charged under serious provisions including Section 376(3) of IPC and various sections of POCSO Act, the actual evidence on record, particularly the statements of the victim and her mother, do not contain specific allegations of penetrative sexual assault as initially charged. The recorded statement under Section 164 Cr.P.C. is crucial evidence, and its absence of specific allegations regarding penetrative assault cannot be ignored.

8. Although the prosecution has relied upon the victim's pregnancy as evidence of penetrative sexual assault, this Court notes that the medical evidence, while significant, must be read in conjunction with other evidence on record. The pregnancy alone, without corroborating evidence regarding the manner and circumstances of conception, may not be sufficient to deny bail at this stage when the investigation is complete and chargesheet has been filed.

9. The prosecution's own case reveals that the initial contact was established through mutual interaction on social media platform (Snapchat), which suggests a different dynamic than cases involving forcible assault or abduction.

10. This Court cannot overlook the fundamental aspect that the applicant has been in continuous custody since 16th August 2023, which amounts to more than two years of actual imprisonment. The period already undergone by the applicant is substantial when viewed against the potential sentence, even if convicted. The

principle of proportionality demands that pre-trial detention should not exceed reasonable limits.

11. The applicant has no previous criminal history, which is a positive factor indicating that he is not a habitual offender. This reduces the likelihood of him committing similar offences while on bail. The applicant was approximately 21 years of age at the time of alleged incident, indicating that he was a young adult. There is no evidence on record to suggest that the applicant is likely to abscond or flee from justice. His continued presence during the investigation period prior to arrest indicates his cooperation with the legal process.

12. The investigation in the present case has been completed and chargesheet has been filed. There is no apprehension of the applicant tampering with evidence or influencing witnesses, as the investigation phase is over.

13. This Court recognises the need to ensure that the victim's safety and interests are protected. However, the same can be achieved through appropriate bail conditions rather than complete denial of bail. The applicant can be directed to maintain distance from the victim and her family, and any violation can result in immediate cancellation of bail.

14. Based on the totality of circumstances, the nature of allegations as supported by evidence on record, the prolonged period of custody already undergone, the constitutional mandate of right to life and liberty, and the established principles of criminal jurisprudence, this Court is of the considered opinion that

the ends of justice would be better served by granting bail to the applicant with appropriate conditions rather than keeping him in continued custody.

15. Therefore, the present bail application is allowed, subject to the conditions hereinafter mentioned in the operative part of this order.

16. Hence, the following order :

(a) The Bail Application stands allowed.

(b) The applicant shall be released on bail in connection with Crime Register No. 468 of 2023 registered with Padgha Police Station for offences punishable under Sections 376(3), 354(a) of the IPC, Sections 4(2), 8, and 12 of the POCSO Act, on executing a Personal Bond in the sum of ₹25,000/- (Rupees Twenty-Five Thousand only) with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court.

(c) The applicant shall not directly or indirectly make any contact with the family members of the victim or any prosecution witnesses, and shall not tamper with the evidence in any manner.

(d) The applicant shall report to the concerned police station once in every month (i.e., on 1st day of every month) between 10:00 a.m. to 12:00 noon, until further orders.

(e) The applicant shall furnish his current residential address and mobile number to the Investigating Officer, and

shall inform the Investigating Officer of any change in address or contact details forthwith.

(f) The applicant shall not enter the jurisdiction of Padgha Police Station, except for the purpose of marking his presence, as directed by the Investigating Officer or the Court.

(f) In case of any breach of the conditions mentioned above, the prosecution shall be at liberty to move for cancellation of bail.

17. The Bail Application stands disposed of accordingly in above terms.

(AMIT BORKAR, J.)