

Shabnoor

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

BAIL APPLICATION NO. 1339 OF 2024

Sunil @ Sonu Jeelesingh

... Applicant

V/s.

State of Maharashtra & Anr.

... Respondents

Mr. Ashutosh Tripathi a/w Ms. Jyoti Agrahari i/b Legal point for the Applicant.

Ms. Supriya I. Kak, APP for State – respondent No.1.

Ms. Vidhi Dugad, for respondent No.2 appointed as legal aid (through V.C.)

Mr. John Pille, PSI, Vile Parle Police Station.

CORAM : AMIT BORKAR, J.

DATED : JULY 2, 2025

P.C.:

1. This is an application filed under Section 439 of the Code of Criminal Procedure, 1973, whereby the applicant seeks his release on bail in connection with Crime Register No. 734 of 2021 registered with Vile Parle Police Station. The applicant stands accused of offences punishable under Sections 376(2)(j)(n) of the Indian Penal Code, 1860, which pertains to aggravated sexual assault by a person in position of trust or authority upon a woman under eighteen years of age, and Sections 4, 6, 8, and 10 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. According to the prosecution case, on 19th December 2021, the Station Duty Officer of Vile Parle Police Station received a telephonic communication from Cooper Hospital, informing that a female minor victim, aged 16 years and 7 months, had been admitted for medical treatment and examination. Upon detailed inquiry by the medical authorities and subsequently by the investigating officer, the victim disclosed the sequence of events that led to her current condition. She stated that in June 2021, she received a phone call from one Sunil, who is allegedly the present applicant, who threatened to cause harm and kill her friend if she did not comply with his instructions and demands. Acting under fear, intimidation and coercion, the victim agreed to meet the said person. The applicant then took her on a motorcycle to an undisclosed and isolated location, where he forcibly took a photograph with her against her will. Using the said photograph as a tool of blackmail and coercion, he threatened to make the photograph viral on social media platforms or other public platforms if she did not obey his further unlawful demands. By giving continuous threats and using the photograph as leverage, he established and maintained physical relationship with her without her genuine consent. Thereafter, by repeatedly giving threats of making the photographs public and causing harm to her reputation and family, he was continuously calling her and maintaining physical relationship with her on multiple occasions. Though the victim resisted his advances on many occasions, he threatened to kill her and cause harm to her family members in case she disclosed the incident to anybody or sought help from authorities.

The victim has also alleged that the applicant physically abused and beat her during these encounters. Subsequently, when the victim was taken to the hospital for medical examination due to her deteriorating health condition, it was discovered that she was pregnant as a result of the alleged sexual assault. Based on this information provided by the victim and the medical examination conducted at Cooper Hospital, the present crime has been registered against the applicant/accused. It is pertinent to note that the applicant had initially applied for bail before the learned Sessions Judge, which application came to be rejected after due consideration. Hence, the present bail application has been filed by the applicant before this Court under Section 439 of the Code of Criminal Procedure.

3. The learned advocate appearing for the applicant has advanced several arguments in support of the bail application. He submitted that according to the prosecution's own case, the age of the victim on the date of the initial incident was 16 years and 7 months, which makes her a minor under the POCSO Act. While acknowledging that the consent of the victim is legally irrelevant for offences under Sections 6 and 8 of the POCSO Act as the victim was a minor and incapable of giving valid consent in law, the learned counsel argued that the narration provided by the victim does not indicate clear application of physical force or coercion by the applicant. He contended that the factum of forcing, coercion, and the alleged misuse of photographs as claimed by the prosecution needs to be properly established during the course of trial through cogent and reliable evidence. The learned counsel

further submitted that the applicant was arrested on 24th January 2022 and has been in custody for a considerable period. He informed the Court that though charges have been framed against the applicant, the actual trial proceedings are yet to be commenced, and there is likely to be further delay in the conclusion of trial. Considering the fundamental right to speedy trial and the principle that bail is the rule and jail is the exception, he prayed for releasing the applicant on bail with appropriate conditions to ensure his presence during trial and to prevent him from tampering with evidence or influencing witnesses.

4. On the other hand, the learned Additional Public Prosecutor (APP) appearing for the State has vehemently opposed the grant of bail to the applicant on several grounds. The learned APP submitted that the prosecution has strong and reliable evidence against the applicant, including the DNA report which establishes the biological connection between the applicant and the pregnancy of the victim. He further submitted that the statement of the victim has been recorded under Section 164 of the Code of Criminal Procedure before the learned Magistrate, which statement corroborates and supports the version of events as narrated by the victim in the First Information Report (FIR). The learned APP emphasized that the alleged consent, even if it existed, is completely irrelevant considering the serious nature of the offences charged and the fact that the victim was a minor at the time of the incident. He argued that the relationship between the applicant and victim was entirely based on threats, intimidation and coercion extended by the applicant by showing and threatening to

make viral the photographs of the victim. The learned APP further submitted that according to the latest information available, the trial proceedings have been scheduled to commence immediately, and the Special POCSO Court has fixed the matter for regular hearing from the very next day. Considering the serious nature of the allegations, the strength of evidence available with the prosecution, the trauma caused to the minor victim, and the imminent commencement of trial, the learned APP submitted that the present application deserves to be rejected, and the applicant should not be released on bail at this stage.

5. Having heard the learned counsel for both parties and after careful consideration of the material on record, this Court proceeds to analyze the application for bail in light of the established legal principles. While it is well-settled that offences under the POCSO Act are serious in nature and require careful judicial scrutiny before granting bail, the Supreme Court in various pronouncements has consistently held that the fundamental principle remains that "bail is the rule and jail is the exception." The Court is required to balance the competing interests of ensuring justice to the victim while also protecting the constitutional rights of the accused, including the right to liberty and speedy trial as guaranteed under Article 21 of the Constitution of India.

6. While the prosecution has presented evidence including the DNA report and the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, this Court notes that the strength of evidence is a matter to be determined during

trial. The DNA report, though establishing biological connection, does not by itself prove the elements of force, coercion, or threat as alleged by the prosecution. The statement of the victim, while supportive of the prosecution case, needs to be tested through cross-examination during trial. At the bail stage, this Court is not required to conduct a mini-trial or conclusively determine the guilt or innocence of the accused. The test is whether there exists reasonable grounds to believe that the accused has committed the offence, which threshold appears to be met in the present case.

7. A significant factor weighing in favor of the applicant is the prolonged period of custody. The applicant has been in judicial custody since 24th January 2022, which amounts to approximately three years and five months. While the learned APP has submitted that the trial is scheduled to commence immediately, this Court notes that charges were framed considerable time ago, yet the actual trial proceedings have not commenced. The constitutional guarantee of speedy trial under Article 21 cannot be rendered meaningless by indefinite incarceration pending trial.

8. While acknowledging the serious nature of the allegations, this Court observes that the prosecution case, as presented, indicates that the alleged relationship, though legally invalid due to the victim's minority, was sustained over a period of time. The victim's own statement suggests a pattern of interaction rather than a single incident of violent assault. Though the element of threat and coercion is alleged, the specific nature and degree of such coercion needs to be established through evidence during trial. The Court notes that the applicant is a young person with no

previous criminal record, which is a relevant consideration for grant of bail.

9. The prosecution has not presented any specific material to suggest that the applicant, if released on bail, would tamper with evidence or influence witnesses. The primary witness is the victim, whose statement has already been recorded under Section 164 of the Code of Criminal Procedure. The medical evidence and DNA report are documentary in nature and cannot be tampered with. The investigation appears to be complete, with charges having been framed. In such circumstances, the apprehension of evidence tampering is more theoretical than real.

10. This Court is of the considered view that while the allegations are serious, the prolonged custody of the applicant without commencement of trial weighs heavily in his favor. The principles of criminal jurisprudence require that the punishment should not precede the trial. Keeping the applicant in custody indefinitely, especially when the trial has not yet commenced in earnest, would amount to punishing him before his guilt is established. The Court must strike a balance between the legitimate concerns of the prosecution and the fundamental rights of the accused.

11. Therefore, this Court proceeds to grant bail to the applicant subject to the conditions as set out in the operative portion of this order.

12. Hence, the following order :

(a) The Bail Application stands allowed.

(b) The applicant, shall be released on bail in connection with Crime Register No. 734 of 2021 registered with Vile Parle Police Station, for offences under Sections 376(2)(j)(n) of IPC, and Sections 4, 6, 8, and 10 of 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) In case of any breach of the conditions mentioned above, the prosecution shall be at liberty to move for cancellation of bail.

13. The Bail Application stands disposed of accordingly.

(AMIT BORKAR, J.)