

Shabnoor

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

BAIL APPLICATION NO. 2960 OF 2024

Irshad Ahmad Naushad Ahmad Shaikh ... Applicant
V/s.
 State of Maharashtra & Anr. ... Respondents

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Mr. Devendra Patil for the Applicant.

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

Mr. Budhbhushan Rajrabre for respondent No.2.

Mr. Abhishek Angad Nampalle, API, Shil Daighar
Police Station.

CORAM : AMIT BORKAR, J.

DATED : JULY 2, 2025

P.C.:

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail by the applicant in connection with Crime Register No.14 of 2024 registered with Shil Daighar Police Station for offences punishable under Sections 354, 376(2)(n), and 506 of the Indian Penal Code, 1860, and under Sections 4, 6, 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “POCSO Act”).

2. The prosecution case, in brief, is that the informant is a minor girl aged around 17 years. The applicant is her cousin uncle.

It is alleged that the applicant, taking undue advantage of his proximity with the victim, initially expressed his desire to marry her, which was refused by the victim by pointing out that he was her maternal uncle. Thereafter, he allegedly assured her that he would convince her family and continued to behave inappropriately whenever he found her alone. The victim, due to fear of being restricted from attending school, did not disclose the behaviour of the applicant to anyone.

3. It is further alleged that after the applicant went abroad to Dubai for work in August 2023, he began making video calls to the victim in a nude state and asked her to undress and perform obscene acts on video, to which she complied out of fear. In December 2023, while the victim was at a marriage function in Uttar Pradesh with her mother, the applicant again made similar demands and threatened her that he would show the obscene videos to her parents if she did not comply.

4. According to the prosecution, upon returning from Dubai, the applicant continued harassing the victim and blackmailing her using the threat of exposing the videos. On 5 January 2024, the victim met the applicant at Mumbra railway station and expressed her mental distress. The applicant then took her to Kalyan and returned with her to Mumbra. On the same day, when she was alone at home, the applicant visited her house and allegedly committed forcible sexual intercourse with her under threat. On the following day, i.e., 6 January 2024, on the pretext of giving her a cat, the applicant took her to his uncle's house and again allegedly committed forcible sexual intercourse. It is stated that

the victim, out of fear, did not inform anyone about these incidents.

5. On 7 January 2024, while the victim was chatting with the applicant, her mother saw the messages on her phone, upon which the victim disclosed the entire sequence of incidents to her parents. Thereafter, an FIR came to be lodged against the applicant.

6. The learned counsel for the applicant has submitted that the victim's statement under Section 164 of Cr.P.C. discloses a continued relationship between the parties. He contended that the alleged incidents occurring when the applicant was in Dubai do not involve physical contact, and when physical contact is alleged to have occurred, it was not accompanied by any resistance. He further submits that medical examination does not indicate signs of physical force or coercion. He also points out that the victim was 17 years of age, close to majority, and thus the application for bail merits consideration. It is also urged that the applicant has been in custody since 9 January 2024, and the trial is not likely to conclude in the near future.

7. On the other hand, the learned Additional Public Prosecutor and the advocate appointed to represent the victim strongly opposed the bail application. It was submitted that the acts committed by the applicant amount to aggravated penetrative sexual assault under the POCSO Act. The allegations in the FIR and the victim's statement indicate that the applicant systematically groomed the victim, threatened her with exposure of videos, and exploited her sexually. It is further submitted that

the applicant's position as a relative and his continuous threats have had a grave psychological impact on the victim, and considering the seriousness of the offence and age of the victim, who was a minor at the relevant time, no indulgence ought to be shown to the applicant.

8. Upon perusal of the charge-sheet and the material placed on record, including the statements of witnesses as well as the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973, it appears that there was a consensual relationship between the applicant and the victim. Although the age of the victim at the relevant time brings into question the legal validity of such consent, what emerges from the narration of incidents is that there is no prima facie material to suggest that the applicant used any force, threat or coercion upon the victim to establish physical relations. The medical examination report of the victim also does not disclose any signs of forcible assault or injuries suggestive of violence. It is also not the case of the prosecution that the applicant had any criminal antecedents or that he had attempted to abscond at any stage. The applicant has been in judicial custody since 6th January 2020, i.e., for a period exceeding five years.

9. On an overall consideration of the factual matrix and the submissions advanced by the respective parties, it is evident that the trial is yet to commence as even the charge has not been framed till date. There is no concrete indication from the prosecution as to when the trial is likely to begin or conclude. Prolonged incarceration of the applicant in such circumstances,

particularly when the trial is not proceeding with due expedition, would offend the principle of speedy trial as guaranteed under Article 21 of the Constitution of India. The Supreme Court, in the case of *Shaheen Welfare Association vs. Union of India*, (1996) 2 SCC 616, has emphasized that undue delay in commencement or conclusion of trial, especially where the accused has undergone significant period of custody, can itself be a valid ground for considering bail.

10. In light of the above and considering the prolonged pre-trial detention of more than five years, coupled with the absence of any material indicating misuse of liberty in the past or likelihood of absconding, I am of the opinion that the applicant deserves to be released on bail. However, in order to ensure that the applicant does not misuse the liberty so granted and appears before the Court as and when required, stringent conditions are necessary to be imposed.

11. In view of the above discussion, the following order is passed:

(a) The Bail Application stands allowed.

(b) The applicant, shall be released on bail in connection with Crime Register No. 14 of 2024 registered with Shil Daighar Police Station, for offences under Sections 354, 376(2)(n), 506 of IPC, and Sections 4, 6, 8, 10, 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 surrender his passport in the Trial Court.

(f) 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.

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

12. The Bail Application stands disposed of in above terms.

(AMIT BORKAR, J.)