

Shabnoor

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

BAIL APPLICATION NO.3629 OF 2024

Nitesh Kashinath Pawar	... Applicant
V/s.	
State of Maharashtra & Anr.	... Respondents

Ms. Bhagyasha Kurane, for the Applicant.

Ms. Rajashree Newton APP for State – respondent.

Mr. Jaikar, API for Rabale MIDC Police Station.

CORAM : AMIT BORKAR, J.

DATED : JUNE 12, 2025

P.C.:

1. This is a bail application made under Section 439 of the Code of Criminal Procedure, 1973, in relation to Crime Register No. 240 of 2023 at Rabale MIDC Police Station. The applicant is seeking bail in a case where charges have been registered under Sections 363 and 376(2)(J)(N) of the Indian Penal Code, 1860, and Sections 4, 6, 8, and 10 of the Protection of Children from Sexual Offences Act, 2012 (commonly known as the “POCSO Act”).

2. According to the prosecution, the applicant/accused kidnapped the victim, who was 15 years and 2 months old at the time of the incident, by promising to marry her. Based on this promise, the applicant had repeated sexual intercourse with her

from 4th July 2023 to 21st December 2023. On 22nd December 2023, the victim's father filed a complaint, and the applicant was arrested on the same day. The Sessions Judge earlier rejected the applicant's bail application mainly because the victim's consent was not considered valid due to her age. Therefore, the applicant has now filed this bail application.

3. The learned advocate for the applicant drew my attention to the victim's statement recorded under Section 164 of the Cr.P.C. In her statement, the victim said that there was a love and relationship between her and the applicant. She also said that she went with the applicant willingly and decided to marry him. She lived with him for about five months, during which time they had sexual intercourse. However, after her father complained, the applicant was arrested. The advocate argued that considering the victim's age (15 years and 2 months at the time of the incident) and the applicant's age (21 years, who can be considered a young adult), pre-trial detention is not necessary. Therefore, she requested that the applicant be released on bail.

4. On the other hand, the learned Additional Public Prosecutor (APP) objected to granting bail to the applicant. He argued that the victim's consent is not relevant because the alleged offences are serious, especially considering the victim's age. He also stated that the applicant should not be released on bail. The victim was served notice for the proceedings, but she chose not to appear or represent herself.

5. I have carefully gone through the charge-sheet, the statement of the victim under Section 164 of the Code of Criminal Procedure, 1973, and other materials placed on record. It is not in dispute that on the date of the alleged incident, the victim was about 15 years and 2 months old, and the applicant was more than 21 years of age. From a bare reading of the victim's statement recorded under Section 164 of the Cr.P.C., it appears that there existed a long-standing relationship of affection between the victim and the applicant. The statement discloses that the victim willingly accompanied the applicant and lived with him at his residence for nearly five months.

6. There is no material brought on record by the prosecution to indicate that the victim was forcibly taken away or kept against her will. On the contrary, her statement reflects that she intended to marry the applicant. However, upon the complaint filed by the father of the victim, the applicant came to be arrested. At this stage, it is to be noted that the version of the victim, which prima facie indicates voluntary companionship, would be a matter of appreciation during trial.

7. It is settled law that at the stage of consideration of bail, the Court is not expected to conduct a mini-trial, but to assess whether custodial interrogation is still required or whether the further detention of the accused serves any useful purpose. In the present case, investigation is complete, the charge-sheet is already filed, and the applicant has been in custody for a considerable time. Taking into account the peculiar facts and circumstances of this case, and especially the nature of the relationship as stated by the

victim herself, the further pre-trial detention of the applicant does not appear to be warranted.

8. It is, however, made clear that this Court is not expressing any opinion on the merits of the case and the observations herein are only for the purpose of deciding the bail application. In view of the above, the applicant deserves to be enlarged on bail. Nevertheless, to ensure that there is no misuse of liberty or any apprehension of threat or undue influence on the victim or her family, appropriate stringent conditions need to be imposed.

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

(a) The Bail Application stands allowed.

(b) Considering the applicant belongs to a Scheduled Tribe category and works as a manual scavenger with limited financial means, he shall be released on cash bail of ₹5,000/- (Rupees Five Thousand only) in connection with C.R. No. 240 of 2023 registered with Rabale MIDC Police Station.

(c) Within a period of four weeks from the date of his release, the applicant shall furnish a Personal Bond of ₹5,000/- (Rupees Five Thousand only) with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court.

(d) The applicant shall not, in any manner, contact the victim or her family members, directly or indirectly.

(e) The applicant shall attend all the trial dates regularly

and shall cooperate with the prosecution during the conduct of the trial.

(f) The applicant shall not tamper with any evidence or attempt to influence any witnesses in any manner.

(g) The applicant shall furnish his present residential address to the Trial Court and shall also inform the Court in the event of any change in his place of residence during the pendency of the trial.

(h) The applicant shall not commit any offence during the pendency of the trial.

10. The Bail Application stands disposed of accordingly.

(AMIT BORKAR, J.)