

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

CRIMINAL BAIL APPLICATION NO. 3776 OF 2024

Abhishek Ganesh Jagtap

... Applicant

Vs.

The State of Maharashtra & Anr.

... Respondents

Mr. Nikitesh Kotangale a/w Mr. Amit Jaiswar, Advocate for the Applicant.

Ms. Kanchan Pawar, Advocate for Respondent No.2.

Mr. T. G. Khan, APP for Respondent/State.

Mr. Ravindra Shegde-PSI, Hadapsar, Police Station, Pune.

CORAM : ASHWIN D. BHOBE, J.

DATE : 31th JULY, 2025.

P.C. :

1. Heard Mr. Nikitesh Kotangale, learned Advocate for the Applicant, Mr. T. G. Khan, learned APP for Respondent-State and Ms. Kanchan Pawar.

2. By the present Application, Applicant is before this Court seeking bail under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS" for short) in connection with Crime No. 1700 of 2023 registered with Hadapsar Police Station, Pune, for the offences punishable under Sections 376, 376-DA, 377, 114, 506 of the Indian Penal Code (for short "**IPC**") and under Sections 4, 6, 8, 10, 12, 17 of the Protection of Children from Sexual Offence Act, 2012 (for short "**POCSO Act**"). Said crime is registered as Special Sessions Case No. 65 of 2024 and is pending before the Court of Special Under POCSO Act, Pune.

3. Applicant is accused No.1, whereas Nilesh Namdeo Yadav is accused No.2 in the said crime.

4. FIR was registered on the basis of the complaint lodged by Respondent No.2 (aged 14 years 10 months). Case of the prosecution is that on 6th November, 2023, Respondent No.2 was subjected to sexual assault by the Applicant and Accused No.2. Respondent No.2 has narrated her ordeal in the complaint filed by her before the police.

5. Applicant was arrested on 6th November, 2023 and since then he is in jail. First Bail Application No. 10 of 2024 filed by the Applicant was rejected on 06.02.2024. Second Bail Application No. 65 of 2024 filed by the Applicant was rejected on 22nd March, 2024. Third, Bail Application at Exhibit-13 on the file Special Sessions Case No. 65 of 2024 was rejected by the Special Judge under POCSO Act on 3rd August, 2024.

6. Mr. Nikitesh Kotangale, learned Advocate for the Applicant, submits that the Applicant has been falsely implicated in the present crime. He submits that the medical report of Respondent No.2 does not indicate any fresh injuries of assault and force being used on Respondent No.2. He submits that though the Applicant was subjected to medical examination, the same was delayed by 5 days. He submits that delay in examination of the Applicant, runs contrary to the scheme of Section 52 of BNSS, 2023. He submits that there are inconsistencies in the Section 161 of C.r.P.C. and statement of the Respondent No.2 recorded under Section 164 of Cr.P.C. He submits that the Respondent No.2 has been examined before the Trial Court. He submits that several discrepancies are brought on record in the deposition of the Respondent

No.2, thereby rendering her testimony doubtful. He tenders a copy of the deposition of the Respondent No.2 recorded in Special Sessions Case No. 65 of 2024, same is taken on record and marked 'X' for identification. He submits that the aged mother and sister who is a person with disabilities, are dependent on the Applicant.

7. Mr. T. G. Khan, learned APP for the State, submits that the Respondent No.2 in her statements recorded by the police as well as under as well as the statement recorded under Section 164 of Criminal Procedure Code has made reference to the sexual assault committed on her by the Applicant and the co-accused. He submits that the Respondent No.2 in her deposition recorded before the Trial Court has maintained her case against the Applicant. He submits that the Respondent No.2 has referred to the manner in which Respondent No.2 was subjected to sexual assault at the hands of the Applicant. He submits that the medical examination of the Applicant was done within 5 days from the registration of the offence and in the said examination, it was found that the Applicant was capable of committing the said offence.

8. Ms. Kanchan Pawar, learned Advocate for the Respondent No.2, submits that the Respondent No.2 in her 164 statement has categorically stated the manner in which the Applicant violated Respondent No.2. She submits that in the deposition of the Respondent No.2 recorded before the Trial Court, Respondent No.2 has maintained her case of being sexually assaulted and abused at the hands of the Applicant. She submits that Respondent No.2 was a minor girl of 14 years and 10 months when she was subjected to the brutality by the Applicant, which has remained as a scar on her life.

9. Perused the record with the assistance of the learned Advocates for the parties.

10. Records of investigation, reveal the manner in which the Respondent No.2, a minor girl was subjected to sexual assault by the Applicant. Respondent No.2 in her statements recorded during the investigation has made reference to the sexual assault committed by the Applicant. Respondent No.2 has stood by her case, in her deposition, recorded in Special Sessions Case No. 65 of 2024.

11. Mr. Nikitesh Kotangale, learned Advocate for the Applicant, attempted to question the credibility of the Respondent No.2, by pointing out some discrepancies in the 161 statement and the statement recorded under Section 164 of Cr. P. C. of the Respondent No.2. Indisputably, trial in Special Sessions Case No.65 of 2024 has commenced and the Respondent No.2 has been examined and cross examined.

12. In the case of **X Vs. State of Rajasthan**¹ the Hon'ble Supreme Court in paragraph No.14 has made the following observations:-

“14. Ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused.”

1 2024 SCC OnLine SC 3539

13. Mr. Nikitesh Kotangale, learned Advocate of the Applicant submits that the decision of X Vs. State of Rajasthan(supra) would not apply to the case of the Applicant. He submits that the case before the Hon'ble Supreme Court was a case wherein bail application was filed midst of the trial, whereas in the instant case, at the time of filing of the present Bail Application, trial had not commenced. He submits that the trial commenced during the pendency of the present application. I am unable to accept the said contention of Mr. N. Kotangale. Indisputably, trial has commenced and the Respondent No.2 has been examined. Incriminating material against the Applicant has come on record, as such the decision in the case of X Vs. State of Rajasthan (supra) would apply.

14. Even otherwise, the material placed along with the charge-sheet and the allegations against the Applicant, indicates the involvement of the Applicant in the present crime. Nature of the alleged offence is such that in addition to physical harm it also inflicts psychological trauma on victims, which have a long-lasting effect. Prima facie, the material on record supports the prosecution's case with regard to the offences charged against the Applicant. No case made out to entertain the present Bail Application.

15. Criminal Bail Application No. 3776 of 2024 is dismissed.

(ASHWIN D. BHOBE, J.)