

Nikita

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

**BAIL APPLICATION NO.3819 OF 2024
AND
CRIMINAL APPEAL NO.907 OF 2024**

Kishor Parmeshwar Kedar ... Applicant

V/s.

State of Maharashtra and Anr. ... Respondent

Mr. A. Avachat a/w S. H. Deshpande a/w Mr. Rahul Nair, for the Applicant.

Dr. A. A. Takalkar, APP for the State.

Mr. Priyal Sarda a/w Shubham Sane a/w Rajesh R. for the Respondent No.2.

Mr. Ravindra Doiphode, PSI, Pune City Police Station

CORAM : ASHWIN D. BHOBE, J.

DATED : 18th JUNE, 2025

P.C.:

1. Offences which are subject matter of the present application amongst other include Sections 3(1)(w)(i)(ii), 3(1)(v), (va), 3(1)(r) (s), of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Present proceedings were video recorded in terms of Section 15-A (10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Heard Mr. A. Avachat, learned Advocate for the Applicant. Dr. A. A. Takalkar, learned APP for the State and Mr. Priyal Sarda, learned Advocate for the Respondent No.2.

3. By the present application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), Applicant is seeking bail in connection with C. R. No.185 of 2023 registered with Alankar Police Station, for the offences punishable under Sections 376, 376(2)(n), 376(3), 354(d), 323, 504, 506, 34 of IPC, under Sections 4, 6 and 12 of the Protection of Children from Sexual Offences Act, 2012 and under Sections 3(1)(w)(i)(ii), 3(1)(v), (va), 3(1)(r)(s), of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Said crime is registered as Special Case No.132 of 2024 and is allotted to the Court of Special Judge (POCSO) Pune.

4. There are two accused in the present crime. Applicant is Accused No.1 and his brother Nakul Parmeshwar Kedar is the Accused No.2.

5. As per the prosecution case, Respondent No.2 a girl studying in 10th standard. Respondent No.2 claimed harassment at the hands of the Accused No.2. Respondent No.2 complained about the said acts of Accused No.2 to the Applicant. Respondent No.2 claims to have been sexually assaulted by the Applicant. Respondent No.2 claims penetrative sexual assault by the Applicant. on two occasions viz 12.10.2023 and on 18.11.2023.

6. Applicant was arrested on 28.11.2023, since then he is in jail.

7. Bail Application at Exhibit-17 on the file of Special Case No.132 of 2024 filed by the Applicant was dismissed on 28.06.2024.

8. Mr. A. Avachat, learned Advocate for the Applicant submits that the Applicant has been falsely implicated in the crime on allegations of rape (i.e. penetrative sexual assault). He submits that the investigation does not indicate of there being any witness to the alleged assault. He, submits that the medical report of the Respondent No.2 does not support the prosecution case. He submits that the medical report states that there is no evidence of vaginal penetration. He submits that the investigation is completed. He submits that there is inconsistency in the statement recorded by the Applicant on 28.11.2024 and in her supplementary statement recorded on 30.11.2023. He submits that the ingredients of the He submits that the charge is not framed till date. He submits that the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are not made out. Applicant does not have criminal antecedents. He submits that the Accused No.2 has been released on bail by the learned Special judge vide order dated 06.03.2024.

9. Ms. A. A. Takalkar, learned APP for the State, submits that the offence, which is subject matter of the present crime is against a minor girl. She submits that the Applicant has sexually assaulted the Respondent No.2 and there is sufficient evidence in the present crime against the Applicant. She submits that though the medical report states that there is no evidence of penetration/vaginal penetration, however the same does not rule out the possibility of attempt of vaginal penetration. She submits that issue of vaginal penetration would be a matter of trial. She submits that no material is come before the Investigation Officer to indicate that

the Applicant having any criminal antecedents.

10. Mr. Priyal Sarda, learned Advocate for the Respondent No.2, submits that the victim has clearly narrated the assaulted on her at the hands of the Applicant to the Police as well as the Magistrate. He submits that the said statement of the Respondent No.2 would have more evidentiary value than the medical report.

11. I have perused the records placed before me with the able assistance of the learned Advocates of the parties.

12. Allegations in the above said crime, is that the Applicant was sexually assaulted on two occasions i.e. 12.10.2023, and 18.11.2023. FIR refers to specific allegations of vaginal penetration on both the occasions. Medical report placed on record opines that there is no evidence of vaginal penetration. Learned Advocate for the Applicant has pointed out the inconsistency in the statement of the Respondent No.2 recorded on 28.11.2023, wherein there is reference to the assault on 18.11.2023 being while returning from class, whereas in the supplementary statement of the Respondent No.2 recorded on 30.11.2023, it is stated that on 18.11.2023, there were no class.

13. Considering the nature of allegations and the opinion referred to in the medical report, *prima facie* would support the contention of the Applicant, that there is no material to support the prosecution case of the Respondent No.2 being subjected to penetrative sexual assault. Prima facie, ingredients of the offences under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, are not made out.

14. Applicant is in jail since 28.11.2023 i.e. for more than one year and seven months. There is no progress in the trial even the Charge is not framed. The trial is unlikely to conclude any time soon. Learned Advocate for the Applicant has stated that the Applicant has not criminal antecedents. Accused No.2 in the said crime has been released on bail.

15. In view of the above, this is a fit case for releasing the Applicant on bail, on the following conditions:

- a) Applicant is directed to be released on bail in connection with C. R. No.185 of 2023 registered with Alankar Police Station, on his furnishing PR bond in the sum of Rs.25,000/- or one or two sureties in the like amount, to the satisfaction of Additional Sessions Judge (Special Court for offences under POSCO, Act), Pune.
- b) Applicant shall attend and regularly appear before the Additional Sessions Judge (Special Court for offences under POSCO, Act), Pune in Special Case No.132 of 2024 on each date of hearing, unless specifically exempted by the Court.
- c) Applicant shall not interfere or threaten or influence any of the witnesses or tamper with evidence.
- d) Applicant shall not contact or attempt to contact the Respondent No.2 and/or a family member, in any manner.
- e) Applicant upon release shall submit his residential address with proofs and contact details to the Investigation Officer.

f) Applicant shall not leave the India without prior permission of the Additional Sessions Judge (Special Court for offences under POSCO, Act), Pune

16. The Bail Application No.3819 of 2024 and Criminal Appeal No.907 of 2024 are disposed off.

(ASHWIN D. BHOBE. J.)