

AGK

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

BAIL APPLICATION NO.3833 OF 2024

Suresh Bechuram Jaiswal	... Applicant
V/s.	
The State of Maharashtra & Anr.	... Respondents

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GANESH
KULKARNI

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ATUL GANESH
KULKARNI
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Mr. Mohd. Saquib Shaikh for the applicant.

Mrs. Rajashree V. Newton, APP for respondent No.1-
State.

Mr. D.S. Sonawane, PSI, Deonar Police Station,
Mumbai, is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 10, 2025

P.C.:

1. By way of the instant bail application filed under Section 439 of the Criminal Procedure Code, 1973, the applicant is seeking regular bail in connection with Crime Register No.0140 of 2024 registered with Deonar Police Station. The applicant stands accused of committing offences punishable under Sections 354 and 354-A of the Indian Penal Code, 1860 read with Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. The case of the prosecution, in brief, is that on 8th February 2024 at approximately 9.00 p.m., there was a quarrel between the victim daughter and one Faiz. After the said quarrel, the victim girl came home and took the informant (her mother) with her outside

the house near the spot where children were playing. It is further alleged that at that time, Faiz and other children started fighting amongst themselves. When the informant went to enquire from the boys about the cause of the quarrel, one of the boys made a statement saying "iski maa ko hakiqat bata do" (tell her mother the truth). At that crucial moment, Faiz, who was a child aged about 7 to 8 years, made a startling revelation saying "that the victim girl takes the back of the car and does dirty things."

3. Upon hearing this serious allegation, the informant questioned the mother of Faiz regarding his allegation, stating "dekho tumhara ladka kya bol raha hai" (see what your boy is saying). In response, Faiz said "aap apni beti ko puchho" (you ask your daughter). When the informant asked her victim daughter about the incident, the victim informed the informant that "bachhi sham ke wakat muje chocolate ke paise deke kutte hospital ke baju wali garden main aur gadi ke piche leke jaata hai" (in the evening, the man gives me money for chocolate and takes me to the garden next to the dog hospital and behind the car) and that he rubs his hands on her chest and back also. When the victim girl was questioned further about these incidents, she disclosed to them that such acts had been perpetrated upon her for the last five to six days consecutively, which shows a pattern of systematic abuse.

4. It is further alleged that thereafter, the informant enquired from Faiz "Bachchi kaun hai" (who is Bachchi), and Faiz showed him the house where Bachchi resided. When they went to the said house, they found that the accused person's wife was present at home. When the informant enquired about the said person from

his wife, she informed the informant that "Bachchi" is her husband, namely Suresh Jaiswal alias Bachchi (hereinafter referred to as applicant/accused), and told them that at present her husband was not at home. The identification of the accused became conclusive when, on being shown her husband's photograph, the victim saw the said photograph and told the informant that it was this particular "uncle" who was doing bad things with her. This identification by the victim child assumes great significance in establishing the identity of the perpetrator.

5. The learned advocate for the applicant has raised several contentions challenging the prosecution case. He has submitted that there are material inconsistencies in the statement of the minor victim. Initially, the victim stated that the applicant enticed her with chocolate, however, later she claimed that the applicant first gave her money, and thereafter, she stated that the applicant gave her money specifically for purchasing chocolate. The learned advocate contends that such inconsistencies cast doubt on the veracity of the victim's testimony. Furthermore, the learned advocate has submitted that the statement attributed to the child Faiz, namely "Iski Maa Ka Sab Hakikath Bata Du Kya" (shall I tell your mother the whole truth), is highly unlikely and improbable for a child of such tender age of 7 years 3 months. He argues that such sophisticated language and understanding of the situation is beyond the comprehension of a child of that age. The learned advocate has also drawn the Court's attention to the fact that the statements of the victim dated 10th February 2024 and 11th February 2024 contain overwriting and corrections, which,

according to him, suggests possible manipulation or coaching of the victim child. He has emphasized that such tampering with the victim's statement raises serious questions about the authenticity of her testimony.

6. Additionally, the learned advocate has submitted that the events alleged to have occurred over six to seven consecutive days is highly improbable and against the normal course of human conduct. He argues that if such incidents were indeed happening, it would have been noticed by others or the victim would have informed someone earlier. The learned advocate has also pointed out that there is no evidence of use of force or sexual penetration in the present case, except for the details of sexual violence in respect of fondling and inappropriate touching. He contends that the absence of such evidence weakens the prosecution case.

7. Relying on the judgment in the case of *Balin Chetia v. The State of Assam*, CRL. A(J)/24/2019 and *Ranjit Hazarika v. State of Assam*, 2018 (2) GLJ 585, the learned advocate has submitted that when the medical evidence does not corroborate the victim's allegations, the case against the accused is significantly weakened. He has emphasized that medical evidence plays a crucial role in cases involving sexual offences, and its absence or non-corroboration creates reasonable doubt. The learned advocate has further submitted that in the absence of foundational facts being established, the presumption under the provisions of POCSO Act is not attracted. He argues that the prosecution must first establish the basic facts before the statutory presumptions can be invoked.

8. The learned advocate has also raised a procedural objection regarding the statement under Section 161 of the Criminal Procedure Code, 1973, which has been signed by the victim, contrary to the provisions of Section 162 of the Criminal Procedure Code, 1973, which prohibits the signing of such statements. This, according to him, is a material irregularity that affects the admissibility and reliability of the statement. Based on these submissions, the learned advocate has contended that the applicant, having been arrested on 9th February 2024, deserves to be released on regular bail. In support of his case, he has relied on the judgments of this Court in *Faikali Hasan Surve v. The State of Maharashtra and Anr. in Bail Application No.4455 of 2021 decided on 10th March, 2023*, and *Majid Bencchu Aalam v. The State of Maharashtra and Anr. in Bail Application No.72 of 2024 decided on 3rd September, 2024*.

9. Per contra, the learned Additional Public Prosecutor, along with the learned Advocate representing the victim, has vehemently opposed the bail application. They have submitted that the victim was merely 7 years 3 months old on the date of the incident, which makes her an extremely vulnerable witness who requires the protection of the Court and the law. The prosecution has contended that the narration of the incident by the victim in her statements under Sections 161 and 164 of the Criminal Procedure Code is substantially consistent, and any minor inconsistencies are natural and expected from a child of such tender age. They have emphasized that absolute consistency cannot be expected from a child victim, and minor variations in her statements do not affect

the credibility of her testimony. The prosecution has highlighted that the First Information Report has been registered by the victim's mother, who is a natural complainant and has no motive to falsely implicate the applicant. The statement under Section 164 of the Criminal Procedure Code has been recorded before the learned Magistrate, and it has graphically narrated the role attributed to the applicant in committing the alleged offences. The prosecution has also submitted that the medical examination history narrated to the hospital and column 15(f) of the medico-legal examination supports the incident alleged by the victim. They have contended that the medical evidence corroborates the victim's testimony to a significant extent. Furthermore, the prosecution has submitted that the medical examination also indicates that the victim was blackmailed by the applicant with threats to cause harm to her mother, which shows the psychological pressure and coercion exercised by the applicant upon the innocent child. This aspect demonstrates the manipulative and predatory behavior of the applicant. Based on these submissions, the prosecution has prayed for the rejection of the bail application, arguing that releasing the applicant on bail would not be in the interest of justice and may also pose a threat to the victim and her family.

10. The present case involves allegations of sexual abuse of a minor child aged 7 years 3 months under the Protection of Children from Sexual Offences Act, 2012. The offences under Sections 8 and 12 of POCSO Act are serious in nature and carry stringent punishment. The legislature, in its wisdom, has provided special protection to children from sexual abuse by enacting the

POCSO Act, recognizing that children are the most vulnerable section of society.

11. The crimes against children, particularly sexual offences, are grave and serious in nature and require careful consideration while granting bail. The Court cannot ignore the legislative intent behind the POCSO Act, which is to provide a child-friendly system for reporting and trial of offences.

12. The victim in the present case is an extremely tender child of 7 years 3 months. At such a young age, she is particularly vulnerable to threats, intimidation, and influence. The best interests of the child are of paramount importance in all proceedings involving children. The release of the applicant on bail may pose a serious threat to the safety and security of the victim child. There is a reasonable apprehension that the applicant may directly or indirectly influence, threaten, or intimidate the victim or her family members, thereby jeopardizing the fair trial of the case.

13. While the learned advocate for the applicant has pointed out certain minor inconsistencies in the victim's statements, this Court is of the view that absolute consistency cannot be expected from a child of such tender age. The minor contradictions or embellishments are natural when a statement is made by a child, and the same cannot be a ground to disbelieve the child's testimony. The core allegation of inappropriate touching and sexual abuse has remained consistent throughout the victim's statements. The victim has clearly identified the applicant as the

perpetrator, and this identification has been made both from his photograph and through other corroborative evidence.

14. The prosecution has submitted that the medical examination history narrated to the hospital and column 15(f) of the medico-legal examination supports the incident alleged by the victim. While the learned advocate for the applicant has argued that medical evidence does not fully corroborate the victim's allegations, this Court notes that in cases involving inappropriate touching and fondling, medical evidence may not always be conclusive. The medical evidence is not always necessary to prove sexual assault, and the testimony of the victim, if found reliable, can form the basis of conviction.

15. The prosecution case reveals that the alleged incidents occurred over a period of five to six consecutive days, showing a systematic pattern of abuse. The victim has disclosed that the applicant would lure her with money for chocolate and take her to secluded places. This modus operandi suggests premeditation and a calculated approach to exploit the innocence of the child. The allegation that the applicant threatened to harm the victim's mother also indicates the psychological coercion and manipulation employed by the applicant. Such behavior demonstrates the predatory nature of the applicant and the potential danger he poses to the victim and other children in the locality.

16. There are several witnesses who need to be examined. The applicant's release on bail may provide him with an opportunity to influence witnesses, tamper with evidence, or obstruct the course

of justice. Given the nature of the offences and the involvement of a child victim, the Court must ensure that the investigation proceeds without any hindrance.

17. The learned advocate for the applicant has argued that the presumption under POCSO Act is not attracted in the absence of foundational facts. However, this Court is of the view that the prosecution has established sufficient prima facie evidence to invoke the presumption under Section 29 of the POCSO Act. The victim's testimony, coupled with her identification of the applicant and the corroborative evidence, creates a strong presumption against the applicant.

18. While the learned advocate has pointed out that the statement under Section 161 CrPC has been signed contrary to Section 162 CrPC, this Court notes that such procedural irregularities, if any, can be addressed during the trial and do not constitute sufficient grounds for granting bail in a case involving such serious allegations.

19. The Court is mindful of the legal principle that bail is the rule and jail is the exception. However, in cases involving sexual offences against children, the Court must balance the personal liberty of the accused against the safety and security of the victim and the larger public interest. While considering bail applications in cases under POCSO Act, the Court must keep in mind the vulnerability of the victim and the possibility of the accused influencing the victim or the witnesses.

20. Insofar as the judgments relied upon by the applicant in the case of *Faikali Hasan Surve* (supra) and *Majid Bencchu Aalam* (supra), which were rendered by coordinate Benches of this Court in earlier bail matters, are concerned, this Court deems it necessary to clarify the binding nature of such orders passed in exercise of bail jurisdiction. It is well-settled that orders passed in bail applications are essentially discretionary in nature and are based on the facts and circumstances of each individual case. The coordinate Bench decisions cited by the applicant were rendered in a different factual context and on the basis of material placed before the Court at that time.

21. Although there is judicial discipline in respecting the views of a coordinate Bench, it cannot be held that every bail order of a coordinate Bench is binding as a precedent on subsequent coordinate Benches. Such orders do not lay down any law of general application, but are rather confined to the peculiar facts of that particular case. The Supreme Court has time and again emphasized that bail orders do not have the status of binding precedents under Article 141 of the Constitution of India, nor do they attract the doctrine of *stare decisis* as applicable to judgments laying down ratio decidendi.

22. It is now well settled that a bail order, passed upon a prima facie appreciation of facts and circumstances emerging from the police papers and placed during a summary hearing, is not intended to lay down any binding precedent. Such orders, by their very nature, are confined to the individual facts of the case and do not determine any substantial question of law. The adjudication in

such matters is inherently discretionary, provisional, and circumscribed by the necessity to grant or deny interim liberty.

23. A bail order, therefore, cannot be cited as a precedent unless the Court, while disposing of the application, has consciously and deliberately examined and decided a specific question of law. Unfortunately, such orders are sometimes relied upon in subsequent cases without appreciating that they are confined in their operation to the peculiar facts of that particular case, and their effect and utility expire with the disposal of that case itself.

24. The Supreme Court in *Delhi Municipal Corporation v. Gurnam Kaur*, (1989) 1 SCC 101, cautioned against blind reliance on prior decisions unless they truly lay down a principle of law. The Apex Court observed:

“Quotability as ‘law’ applies to the principle of a case, its ratio decidendi. The only thing in a Judge’s decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided.... The task of finding the principle is fraught with difficulty because without an investigation into the facts, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice. Precedents sub silentio and without argument are of no moment.”

(Emphasis supplied)

25. Similarly, in *State of Orissa v. Sudhansu Sekhar Misra*, AIR 1968 SC 647, the Supreme Court authoritatively reiterated that:

“A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from

the various observations made in it. It is not a profitable task to extract a sentence here and there from a judgment and to build upon it.”

(Emphasis supplied)

26. These authoritative pronouncements reinforce the jurisprudential doctrine that a precedent binds only to the extent that it decides a specific legal issue upon due consideration. Casual or incidental observations, or orders made without consideration of the question of law, are not precedents and cannot be cited as binding authority.

27. Applying the above principle with specific reference to bail orders, it must be noted that such orders operate on an entirely different footing than decisions on substantive legal rights. The very nature of a bail order is interlocutory, based upon the immediate necessity of balancing liberty and investigation, and it is not intended to enunciate a proposition of law. At times, certain facts or considerations influencing the grant or denial of bail may not even be expressly recorded in the order, yet may have weighed in the judicial mind.

28. Hence, a bail order, even if passed by a coordinate Bench of this Court, which proceeds on facts specific to that case, cannot be pressed into service as a binding precedent in another case involving different factual matrix. The Supreme Court in *Union of India v. Dhanwanti Devi*, (1996) 6 SCC 44, has observed that:

“It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding as a legal precedent is the principle upon

which the case is decided, and for this reason, it is important to analyse the facts of the case and the process of reasoning involving application of those facts.”

29. This principle applies with even greater force to bail orders. The judicial discretion exercised in such cases is based on a constellation of factors including the role attributed to the accused, the nature of allegations, evidence collected, antecedents, threat to witnesses, possibility of tampering, and the stage of investigation or trial. These factors vary from case to case, and the discretion exercised in one case cannot be mechanically applied to another.

30. Therefore, while it is permissible for an accused to point out parity or similarity in role with a co-accused who may have been enlarged on bail, it is equally incumbent upon the Court to assess the overall facts of the case and apply its own independent judicial mind. As held in *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528:

“A court considering an application for bail cannot ignore the nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, and the likelihood of the accused absconding or tampering with prosecution evidence. Each case has to be decided on its own facts.”

31. In conclusion, it may be reiterated that bail orders are essentially *ad hoc* determinations rooted in the facts of the case, and not declarations of law. They do not create binding precedent unless a question of law is explicitly dealt with and decided. Any reliance on such orders must therefore be cautious, contextual, and never as a definitive authority.

32. Hence, mere reliance on bail orders passed in other cases by coordinate Benches, without establishing parity on facts and circumstances, cannot by itself be a ground for grant of bail.

33. In view of the above analysis and reasoning, the instant bail application under Section 439 of the Criminal Procedure Code, 1973 filed by the applicant is hereby rejected.

34. However, this order shall not prejudice the case of either party during the trial, and the trial court shall decide the case on its own merits based on the evidence adduced during the trial.

(AMIT BORKAR, J.)