

VRJ

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

BAIL APPLICATION NO.4105 OF 2024

VAIBHAV
RAMESH
JADHAV
Digitally signed by
VAIBHAV RAMESH
JADHAV
Date: 2025.06.18
18:41:10 +0530

Kishor Mungaji Ghode

... Applicant

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. A. K. Singh with Mr. Piyush A. Singh for the applicant.

Ms. Supriya Kak, APP for the State.

Ms. Ashwini Achari for respondent No.2.

Mr. Navnath Shinde, PSI, Oshiwara Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 18, 2025

P.C.:

1. By this application filed under Section 439 of the Criminal Procedure Code, 1973, the applicant is seeking regular bail in connection with Crime No.00 of 2024 registered at Wanwadi Police Station, Pune. The said crime was subsequently transferred to Oshiwara Police Station, Mumbai and renumbered as C.R. No.653 of 2024. The applicant stands accused of committing offences punishable under Sections 376 (rape), 376(2)(f) (rape by person in position of authority), 376(2)(n) (rape causing grievous bodily harm), and 376(3) (rape upon a woman under sixteen years of age) of the Indian Penal Code, 1860. Additionally, charges

have been framed under Sections 4 (penetrative sexual assault), 6 (aggravated penetrative sexual assault), and 8 (sexual assault) of the Protection of Children from Sexual Offences Act, 2012.

2. The prosecution case, as presented before this Court, reveals a disturbing sequence of events. The victim's mother, who works as a sugarcane crop cutter along with her husband, initially approached the Wanwadi Police Station, Pune to lodge her complaint. Due to their occupation requiring frequent travel and demanding physical labour, the couple had made arrangements for their daughter's education by placing her in the care of her paternal aunt in Mumbai.

3. On 17th May 2024, the victim girl's family gathered in Pune to attend the death anniversary ceremony of the informant's mother-in-law, which is a customary religious observance in Indian families. The victim girl had also come to Pune from Mumbai to participate in this family ceremony. Upon completion of the said religious program, the victim's mother, as per their previous arrangement, instructed her daughter to return to the house of her paternal aunt (sister-in-law) in Mumbai to continue her studies.

4. However, contrary to her usual compliance, the victim girl vehemently refused to return to Mumbai and began crying inconsolably. When the victim's mother, concerned by this unusual behaviour, inquired about the reason for her distress and refusal, the victim girl made shocking revelations about her ordeal.

5. The victim disclosed that the house of her aunt was small and cramped, and whenever she would go to sleep near the door

area due to lack of space, her aunt's son-in-law (the present applicant) would take advantage of the darkness and her vulnerable position. She narrated that during nighttime, the applicant would approach her sleeping area and commit acts of molestation by inappropriately touching her private parts and pressing her chest. The victim further revealed more serious allegations stating that the applicant would lie down on top of her and insert his fingers into her private parts, causing her immense physical pain and trauma.

6. The victim's account becomes even more harrowing when she described the physical consequences of these repeated sexual assaults. She informed her mother that due to these acts, she would experience severe pain in her private parts, and on occasions, there was even bleeding from her private parts, indicating the severity of the physical trauma inflicted upon her young body.

7. Consequently, upon receiving this complaint, the Wanwadi Police Station, Pune took immediate cognizance of the matter and registered the crime. Since the alleged offences occurred within the jurisdiction of Mumbai, the case was properly transferred to Oshiwara Police Station, Mumbai in accordance with the provisions of territorial jurisdiction under the Criminal Procedure Code.

8. The investigating officers at Oshiwara Police Station conducted a thorough investigation into the matter, which included recording statements of various witnesses, collecting

medical evidence, and following all procedural requirements mandated under the law for cases involving sexual offences against minors. Upon completion of the investigation, the police filed a comprehensive charge sheet before the competent court, indicating that sufficient evidence had been gathered to proceed with the trial.

9. The present applicant had earlier approached the learned Sessions Judge with an application for bail, which was rejected after detailed consideration. The learned Sessions Judge, while passing the order of rejection, assigned several cogent reasons for denying bail to the applicant. One of the primary and significant reasons noted by the Sessions Judge was the applicant's apparent ability to exercise considerable influence upon the victim girl and her parents. This influence became evident during the course of investigation when there was a noticeable change in the stance of the victim and her family members. The Court observed that such influence was possible because the applicant was a close relative of the victim's family, being the son-in-law of the victim's paternal aunt, which gave him easy access to the family and the ability to pressurize them. The Sessions Judge was particularly concerned about the potential for the applicant to intimidate or influence the witnesses if released on bail, given the family relationship and the demonstrated change in the victim's position during the investigation process.

10. The learned advocate appearing for the applicant has raised several contentions in support of the bail application. The primary argument advanced is regarding the inconsistency between the

victim's statement recorded under Section 161 of the Criminal Procedure Code during the investigation and her subsequent statement recorded by the learned Magistrate under Section 164 of the Criminal Procedure Code, 1973.

11. The learned counsel submitted that such material inconsistencies in the victim's statements create reasonable doubt about the veracity of the allegations and therefore constitute sufficient grounds for granting bail under Section 439 of the Criminal Procedure Code. The advocate argued that these contradictions go to the root of the prosecution case and cast serious aspersions on the reliability of the victim's testimony.

12. In support of this contention, the learned advocate has placed reliance upon two judgments of the Allahabad High Court. The first is the case of *Dharmendra @ Patra vs. State of U.P.*, decided on 1st October 2021, and the second is *Ajay Diwakar vs. State of UP and Others*, decided on 3rd May 2023. The counsel argued that these precedents establish the principle that material contradictions in victim's statements can be a ground for considering bail in serious offences.

13. Per contra, the learned Additional Public Prosecutor (APP) representing the State and the learned advocate specifically appointed to represent the interests of the victim have strongly opposed the bail application on several grounds. They have submitted that despite the alleged inconsistencies pointed out by the defence, the graphic and detailed narration of the incident by the victim finds strong corroboration in the medical evidence

collected during the investigation. The medical examination and reports support the victim's account of sexual assault and provide independent evidence of the physical trauma suffered by the child.

14. The prosecution has particularly emphasized that the change in the victim's stance while recording her statement under Section 164 of the Criminal Procedure Code, 1973, far from weakening the case, actually strengthens the prosecution's argument about the applicant's influence over the victim and her family. They argued that this change squarely indicates that the applicant, through his relatives and family connections, exercised considerable pressure and influence over the victim and her family members, thereby forcing the victim to alter her statement.

15. The prosecution has also drawn the Court's attention to the tender age of the victim, who was merely 12 years old at the time of the alleged incident. They submitted that children of such young age are particularly vulnerable to influence and pressure from adult family members, especially when the accused person holds a position of authority and trust within the family structure.

16. Furthermore, they have specifically referred to the order passed by the learned Special Judge, which contains a crucial piece of evidence regarding the victim's current state of mind. According to the Special Judge's order, the victim girl, in her statement (marked as Exhibit-9), has expressly opposed the bail application of the accused. The victim clearly stated her fear that if the applicant is released on bail, he would again harass her and cause her further trauma.

17. Based on this evidence, the prosecution contended that the learned Special Judge had rightly recorded a finding that in case of release of the applicant, there is a definite and imminent danger that he will ensure, through various means including intimidation and pressure, that neither the victim nor her family members will have the courage to depose against him during the trial. This would effectively defeat the ends of justice and deny the victim her right to a fair trial.

18. However, this Court cannot ignore the significant development that occurred during the recording of the victim's statement under Section 164 of the Criminal Procedure Code, 1973. The change of stand by the victim while recording this crucial statement before the learned Magistrate raises serious concerns that go beyond mere inconsistency in testimony.

19. When viewed in the context of the established relationship between the applicant and the victim's family, wherein the applicant is the son-in-law of the victim's paternal aunt and therefore occupies a position of authority and influence within the extended family structure, the timing and nature of this change becomes highly suspicious. The applicant, by virtue of his family relationship, had continuous access to the victim and her family members and was in a position to exercise pressure, influence, or intimidation.

20. The finding recorded by the learned Special Judge regarding the applicant's ability to exercise great influence over the family of the victim is based on sound reasoning and cannot be ruled out or

dismissed lightly. The Special Judge, having the benefit of examining the witnesses and observing their demeanor during the proceedings, was better placed to assess the dynamics of influence and pressure operating within the family.

21. In cases involving sexual offences against children, courts have consistently recognized that victims and their families often face tremendous pressure from the accused persons, particularly when there are family relationships involved. The Supreme Court and various High Courts have repeatedly emphasized that such influence can manifest in various subtle and not-so-subtle ways, ranging from emotional manipulation to economic pressure and social exclusion.

22. This Court is mindful of the fact that bail is the rule and jail is the exception, and every accused person has the fundamental right to liberty under Article 21 of the Constitution of India. However, this right must be balanced against the equally important considerations of ensuring a fair trial, protecting witnesses from intimidation, and maintaining public confidence in the criminal justice system.

23. In cases involving sexual offences against children, the Supreme Court has laid down specific guidelines that require courts to be extremely cautious while considering bail applications. The tender age of the victim, the nature of the allegations, the relationship between the accused and the victim, and the possibility of the accused influencing witnesses are all relevant factors that must be carefully weighed.

24. The present case involves allegations under the Protection of Children from Sexual Offences Act, 2012, which is a special legislation enacted to provide protection to children from sexual offences. The very purpose of this legislation would be defeated if accused persons in such cases are readily granted bail without proper safeguards, particularly when there is evidence of potential influence over witnesses.

25. Therefore, considering the totality of circumstances, including the change of stand by the victim during the recording of her statement under Section 164, the established relationship of the applicant with the victim and her family, and the clear finding by the Special Judge regarding the applicant's influence over the victim's family, this Court is of the considered opinion that the finding recorded by the Special Judge cannot be ruled out or disregarded.

26. The Court is particularly concerned about the potential for further intimidation and influence if the applicant is released on bail at this crucial stage of the proceedings. The victim's express opposition to the bail application, as recorded in Exhibit-9, demonstrates her genuine fear of further harassment and intimidation if the applicant is released.

27. In this Court's opinion, therefore, at least until the statements of the victim and her family members are recorded during the trial proceedings, and the prosecution has had a fair opportunity to present its case without the risk of witness intimidation, it is not desirable or in the interests of justice that the

applicant should be released on bail.

28. The Court recognizes that this decision may cause hardship to the applicant, but the paramount consideration must be the protection of the victim and the integrity of the judicial process. The right to a fair trial is not limited to the accused alone but extends equally to the victim and the prosecution.

29. Hence, keeping in mind the need to balance the rights of the accused with the protection of the victim and the integrity of the trial process, the following order will meet the ends of justice and ensure expeditious disposal of the case:

(i) The present bail application filed by the applicant under Section 439 of the Criminal Procedure Code, 1973, is hereby rejected.

(ii) The learned Special Judge is hereby directed to endeavour to record the statements of the victim and her family members within a period of six months from the date of this order.

(iii) It shall be open for the applicant to prefer a fresh application for bail after the expiry of six months from the date of this order, in case there is no substantial progress in the matter or if the statements of the victim and family members have been recorded and the circumstances warrant reconsideration of the bail application.

(iv) The learned Special Judge is further directed to ensure expeditious disposal of the case in accordance with the

timelines prescribed under the Protection of Children from Sexual Offences Act, 2012, and to take appropriate steps to prevent any delay in the trial proceedings.

(AMIT BORKAR, J.)