

Shabnoor

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

BAIL APPLICATION NO.4385 OF 2024

Siddharth Jaywant Jadhav	... Applicant
V/s.	
State of Maharashtra & Anr.	... Respondents

Ms. Anjali Patil a/w Mr. Tohid Shaikh with Onkar Gurav for the Applicant.

Ms. Megha Bajoria, APP for the State – respondent.

Ms. Afreen S. Shaikh for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : JUNE 18, 2025

P.C.:

1. This is an application filed under Section 439 of the Code of Criminal Procedure, 1973, whereby the applicant seeks his release on bail in connection with Crime Register No. 306 of 2023 registered with Kurar Police Station, for offences punishable under Sections 376 of the Indian Penal Code, 1860, and Sections 4, 8, and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. According to the prosecution case, the victim, a minor girl aged 14 years, lodged a complaint report stating that on 27th May 2023, she discovered that she was pregnant. In her statement, she revealed that in October 2022, she had developed a relationship with the co-accused Vishwanath, who had sexual intercourse with

her on the pretext of love and promising marriage. However, she subsequently abandoned this relationship when she realized the false nature of his promises.

3. The victim further stated that she was in a friendly relationship with the present applicant and his another friend, who is also a co-accused in this case. Taking advantage of her vulnerable emotional state and the trust she reposed in him, the applicant thereafter took her to his house and committed sexual intercourse with her, falsely representing that he was genuinely in love with her and would take care of her future. The victim, being a minor and emotionally manipulated, fell prey to his false assurances.

4. She thereafter started to avoid both the applicant and his friend, as her family members began to suspect her changed behavior and started questioning her activities. During this period of emotional turmoil and family pressure, she was further exploited by the applicant's friend Ashish, who also committed sexual intercourse with her after making similar false promises of love and commitment.

5. The victim's pregnancy became apparent in May 2023, which led to the discovery of these incidents and the subsequent lodging of the complaint. Based on the detailed report submitted by the victim, all three accused persons, namely the present applicant, Vishwanath, and Ashish, have been arrested and charged under the relevant provisions of law. It is pertinent to note that the learned Special Judge, after considering the facts and

circumstances of the case, has already released the co-accused Vishwanath on bail, but has rejected the present applicant's bail application. Aggrieved by this rejection, the applicant has now approached this Court seeking his release on bail.

6. The learned advocate appearing for the applicant has advanced several arguments in support of the bail application. He submitted that the role attributed to the present applicant in the commission of the alleged offences is substantially similar to that of the co-accused Vishwanath, who has already been granted bail by the learned Special Judge. He argued that there is no material difference in the degree of involvement or culpability between the applicant and Vishwanath, and therefore, the principle of parity demands that the applicant should also be granted similar relief.

7. Furthermore, the learned counsel submitted that from the detailed narration of the incident as presented by the prosecution, it clearly appears that the victim did not offer any physical resistance during the alleged incidents. He argued that this fact indicates that the acts were consensual in nature, though he acknowledged the legal position regarding consent in cases involving minors. The counsel also emphasized that there has been a considerable delay in lodging the complaint, as the alleged incidents occurred in October 2022, but the report was filed only in May 2023, after the victim discovered her pregnancy.

8. The learned advocate further contended that such delay in reporting raises questions about the veracity of the allegations and also entitles the applicant to favorable consideration for grant of

bail. He submitted that the applicant was arrested on 28th May 2023 and has been in custody since then, and considering the present state of the judicial system and the backlog of cases, the trial is not likely to be concluded within a reasonable period. He argued that keeping the applicant in prolonged custody without trial would amount to pre-trial punishment, which is against the fundamental principles of criminal jurisprudence.

9. On the other hand, the learned Additional Public Prosecutor (APP), representing the State, and the learned Advocate specifically appointed to represent the interests of the victim, have vehemently objected to the grant of bail to the applicant. They have raised strong contentions against the applicant's release, emphasizing the serious nature of the charges and the need to protect the victim from further trauma.

10. The learned APP submitted that at the relevant time when the alleged incidents occurred, the chronological age of the victim was only 14 years, making her a child as defined under the POCSO Act. He argued that under the law, particularly the provisions of the POCSO Act, the question of consent is completely irrelevant and of no legal consequence when the victim is a minor below the age of 18 years. The law presumes that a child is incapable of giving valid consent to sexual acts, and therefore, any sexual activity with a minor constitutes an offence regardless of whether there was apparent consent or not.

11. The learned counsel for the victim further submitted that the applicant has committed a grave offence against a vulnerable

child, and his release on bail would not only send a wrong message to society but would also pose a potential threat to the victim and her family. They argued that the victim, being a minor, requires protection from any form of intimidation or influence that might affect her testimony during the trial.

12. Both the prosecution and the victim's counsel emphasized that the delay in lodging the complaint is not unusual in cases involving sexual offences against minors, as victims often take time to understand the gravity of what has happened to them and to gather courage to report such incidents. They submitted that considering the serious nature of the charges under the POCSO Act and the need to ensure a fair trial, the bail application deserves to be rejected outright.

13. After carefully considering the submissions made by both sides, perusing the case diary, and examining the relevant legal precedents, this Court proceeds to analyze the present bail application on the established parameters for grant of bail in serious criminal cases. While this Court acknowledges that the charges leveled against the applicant under Sections 376 IPC and Sections 4, 8, and 12 of the POCSO Act are undoubtedly serious in nature, it is well-settled that the gravity of the offence alone cannot be the sole determining factor for denial of bail. The Supreme Court in various pronouncements has held that even in cases involving serious offences, bail cannot be refused merely on the ground of seriousness, if other factors favor the grant of bail.

14. This Court finds considerable merit in the submission made

by the learned counsel for the applicant regarding the principle of parity. The co-accused Vishwanath, who allegedly had the first sexual encounter with the victim and is equally culpable in the chain of events leading to the victim's exploitation, has already been granted bail by the learned Special Judge. The role attributed to the present applicant appears to be similar to that of Vishwanath, and there is no material placed on record to suggest that the applicant's involvement is more heinous or aggravated compared to the co-accused who has been released.

15. The principle of parity demands that similarly situated accused persons should be treated equally, unless there are compelling reasons to distinguish between them. In the present case, no such distinguishing factors have been brought to the notice of this Court.

16. The applicant has been in custody since 28th May 2023, which amounts to a considerable period of incarceration without trial. The constitutional guarantee under Article 21 of the Constitution includes the right to speedy trial, and prolonged detention without trial violates this fundamental right. Given the current state of pendency in courts and the time typically required for completion of trials in POCSO cases, it is evident that the trial is unlikely to conclude within a reasonable timeframe.

17. The prosecution has not placed any specific material on record to demonstrate that the applicant, if released on bail, would tamper with evidence or influence witnesses. The investigation appears to be substantially complete, and the charge sheet has

been filed. The victim's statement has been recorded under Section 164 Cr.P.C., and medical evidence has been collected. In such circumstances, the possibility of evidence tampering appears remote.

18. There is no material on record to suggest that the applicant is a flight risk or has any previous history of jumping bail. The applicant has roots in the community and has been available for investigation whenever required.

19. Considering the totality of circumstances, the nature of allegations, the period of custody already undergone, the principle of parity with co-accused, and the constitutional guarantee of personal liberty, this Court is inclined to grant bail to the applicant subject to stringent conditions to ensure that the trial proceeds smoothly and the victim's interests are protected.

20. After balancing all the relevant factors and considering the submissions made by both sides, this Court finds that the case is fit for grant of bail. The prolonged custody of the applicant without any immediate prospect of trial conclusion, coupled with the principle of parity with the co-accused who has already been granted bail, weighs in favor of the applicant.

21. While the Court is mindful of the serious nature of the charges and the need to protect the victim, it is satisfied that with appropriate conditions, the applicant can be released on bail without prejudicing the trial or compromising the victim's safety. The constitutional principle that "bail is the rule and jail is the exception" must be given due weightage, especially when the

applicant has already undergone substantial custody and the trial is likely to take considerable time for completion.

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

- (a) The Bail Application stands allowed.
- (b) The applicant Siddharth Jaywant Jadhav shall be released on bail in connection with Crime Register No. 306 of 2023 registered with Kurar Police Station, for offences punishable under Sections 376 IPC, Sections 4, 8, and 12 of POCSO Act, upon executing a Personal Bond in the sum of ₹25,000/- (Rupees Twenty-Five Thousand only) with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court.
- (c) The applicant shall not directly or indirectly make any contact with the family members of the deceased or any prosecution witnesses, and shall not tamper with the evidence in any manner.
- (d) The applicant shall report to the concerned police station once every month (i.e., on 1st day of every month) between 10:00 a.m. to 12:00 noon, until further orders.
- (e) The applicant shall furnish his current residential address and mobile number to the Investigating Officer, and shall inform the Investigating Officer of any change in address or contact details forthwith.

(f) In case of any breach of the conditions mentioned above, the prosecution shall be at liberty to move for cancellation of bail.

23. The Bail Application stands disposed in above terms.

(AMIT BORKAR, J.)