

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

CRIMINAL BAIL APPLICATION NO. 93 OF 2025

Rahul Burman ... Applicant
Vs.
The State Of Maharashtra & Anr. ... Respondents

Mr. Kuldeep Nikam a/w Nishi Singhvi, Advocate for the Applicant.
Mr. S. S. Chaudhari, APP for Respondent-State.
Mr. Sandip Patil, P.I. Palus Police Thane.
Mr. P. R. Sutar, Police Constable, Palus, Police Thane.
Ms. Komal Sinha, Advocate for Respondent No.2.

CORAM : ASHWIN D. BHOBE, J.

DATE : 9th JULY, 2025.

P.C. :

1. Heard Mr. Nikam learned Advocate for the Applicant, Mr. Chaudhari, learned APP for Respondent-State and Ms. Komal Sinha, learned Advocate for the Respondent No.2.

2. Applicant, by the present Application filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “BNSS”), is seeking Regular Bail in Crime No.814 of 2023 registered at Kondhawa Police Station, Pune for the offences punishable under Section 354 of the Indian Penal Code and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012. Said crime is registered as Special Case No.998 of 2023.

3. Applicant was arrested on 8th August, 2023, and since then the Applicant is in jail. Criminal Bail Application at Exhibit-8 filed by the Applicant in Special Case No. 998 of 2023 was dismissed by the Special Judge under the POCSO Act, Pune, by order dated 18th September, 2024.

4. Mr. Kuldeep Nikam, learned Advocate for the Applicant, submits that the maximum punishment for the offences charged against the Applicant would be 5 years imprisonment. He submits that the involvement of the Applicant in the present crime is as a first timer. He submits that the Applicant does not have any criminal antecedents. He clarifies by submitting that the Applicant is not involved in any criminal case, prior to the present crime. He submits that the Applicant is in jail for a period of 1 year and 11 months. He submits that the Applicant, having undergone imprisonment for a period exceeding 1/3rd of the maximum period, would be entitled to bail under Section 479 of "BNSS".

5. Mr. Chaudhari, learned APP for the State submits that the offence in the present crime is serious, and therefore the Applicant should not be given the benefit of Section 479 of "BNSS".

6. Ms. Komal Sinha, learned Advocate for the Respondent No. 2 submits that the conduct of the Applicant does not warrant reliefs to the Applicant.

7. I have perused the records with the assistance of the Advocate for the parties.

8. Offences alleged against the Applicant in the present crime are Section 334 of the I.P.C., for which the maximum punishment prescribed is 5 years; Sections 8 and 12 of the POCSO Act, for which the maximum period is 5 years and 3 years respectively. Thus, in the event of conviction, the maximum punishment for the aforesaid offences would be 5 years.

9. Indisputably, the Applicant was arrested on 8th August, 2023. Mr. Nikam submits that the Applicant is in jail for a continuous period of one year and 11 months. Thus, the Applicant has undergone detention for a period extending 1/3rd of the maximum period of imprisonment specified for the offences Applicant is charged in the present crime.

10. Mr. Nikam, on instructions, reiterates that the Applicant is not involved in any crime other than the crime which is the subject matter of Special Case No.998 of 2023. Thus, the Applicant would have to be treated as a *first time offender*.

11. Section 479 (1) of BNSS” and the first proviso to it reads as follows :-

Section 479(1): Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence

under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail:

Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law:

Provided further that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail bond instead of his bond:

Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

12. Considering undisputed facts on record, the Applicant being the first time offender, charged for the of offences referred hereinabove and the Applicant having undergone detention for a

period extending to 1/3rd of the maximum period of imprisonment specified for such offences under the law, the Applicant would be entitled to bail in terms of proviso to Section 479 (1).

13. Section 479 (3) of BNSS reads as follows :

(3)The Superintendent of jail, where the accused person is detained, on completion of one-half or one- third of the period mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail.

14. On a query to the learned APP whether the Superintendent of jail has taken recourse to Section 479 (3) of “BNSS”, in the present crime, Mr. Chaudhari, learned APP, on instructions of the Investigation Officer, has submitted that no such recourse has been taken.

15. The Hon’ble Supreme Court in the case of **IN RE- INHUMAN CONDITIONS IN 1382 PRISONS¹** has in paragraph Nos. 1 to 6 held as follows:-

1. This order is in continuation of the order passed on 13th August, 2024. On the last date of hearing, Mr. Gaurav Agrawal, learned Amicus Curiae had submitted that the Bharatiya Nagarik Suraksha Sanhita, 2023¹, which has replaced the Code of Criminal Procedure, 1973 w.e.f. 01st

¹ Writ Petition (civil) No. 406 of 2013

July, 2024, contains a provision under Section 479 relating to the 'Maximum period for which an under trial prisoner can be detained'. The attention of this Court was drawn to the first proviso to Section 479 to urge that a first-time offender (who has never been convicted for any offence in the past) is required to be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such an offence under a particular law.

2. Having regard to the fact that the substituted provision under the BNSS is more beneficial vis-a-vis Section 436A of the Code of Criminal Procedure, 1973, wherein the period undergone by the first time offender was prescribed as up to half of the maximum period of imprisonment specified for such an offence, this Court had called upon the learned Additional Solicitor General to obtain instructions from the Department and submit a clarification regarding application of the said provision to all undertrials across the country.

3. Today, Ms. Aishwarya Bhati, learned Additional Solicitor General, submits that pursuant to the aforesaid order, instructions have been obtained from the Department to the effect that the aforesaid provision under the BNSS shall apply to all undertrials in pending cases irrespective of whether the case was registered against them before 01 July, 2024, the date when the newly minted legislation has come into effect.

4. In that view of the matter, it is deemed appropriate to direct immediate implementation of Section 479 of the BNSS by calling upon Superintendents of Jails across the country wherever accused persons are detained as undertrials, to process their applications to the concerned Courts upon their completion of one-half/one-third, as the case may be, of the

period mentioned in sub-section (1) of the said provision, for their release on bail. This step will go a long way in easing overcrowding in jails which is the primary focus of this Court in the present petition.

5. The aforesaid steps shall be taken as expeditiously as possible, preferably within two months from today. Reports shall be submitted by the Superintendent Jails to their respective Heads of the Department within the same time line for a comprehensive affidavit to be filed by each State Government/Union Territory through their respective Chief Secretaries. The affidavits shall furnish the details of the number of undertrials who would be entitled to extension of the benefit of Section 479 of the BNSS, the number of applications moved before the concerned Courts for their release and the number of undertrials actually released by the date of filing of the affidavits.

6. Compliance of the aforesaid provisions shall be made by the concerned District & Session Judges in all States/UTs who are in-Charge of the Under Trial Review Committees so that there is no laxity in implementation of the aforesaid beneficial provision.

16. Mr. Nikam, the learned Advocate for the Applicant on instructions of the Applicants states that if indulgence is shown to the Applicant, the Applicant shall not enter the territorial jurisdiction of Kondhawa Police Station, till the conclusion of the trial in Special Case No. 998 of 2023 till the conclusion of the trial Statement is accepted.

17. In view of the above, the Applicant is entitled to be released on bail.

18. The present Bail Application is allowed on the following terms:-

(a) Applicant be released on bail in Crime No. 817 of 2023 registered with Kondhawa Police Station, Pune, upon furnishing P.R. Bond in the sum of Rs. 25,000/-each with one or two sureties in the like amount.

(b) Applicant shall appear before the Trial Court in Special Case No. 998 of 2023 on each date of hearing unless exempted.

(c) Applicant shall not enter the territorial jurisdiction of Kondhwa Police Station till the conclusion of the trial in Special Case No. 998 of 2023.

(d) Applicant shall not influence or interfere with witness or tamper with the evidence.

(e) Applicant upon his release, within 3 days shall furnish his residential addresses with proof and contact details to the Investigating Officer, Kondhawa Police Station, Pune.

19. Bail Application No. 93 of 2023 is disposed of.

(ASHWIN D. BHOBE, J.)