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

BAIL APPLICATION NO.110 OF 2025

Rahul Vijay Shinde	... Applicant
V/s.	
The State of Maharashtra & Anr.	... Respondents

Mr. Ritesh Thobde (through V.C.) with Ms. Zubi Ansari
for the applicant.

Mr. Prasanna P. Malshe, APP for respondent No.1-State.

Ms. Aneesa Cheema for respondent No.2-victim
(appointed as Legal Aid).

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CORAM : AMIT BORKAR, J.

DATED : AUGUST 21, 2025

P.C.:

1. By the present application filed under Section 439 of the Code of Criminal Procedure, 1973 (“Cr.P.C.”), the applicant seeks his release on regular bail in connection with Crime Register No.24 of 2023, registered with Kalyan Taluka Police Station. The offences alleged against the applicant are punishable under Sections 376(A), 376(B), 376(2)(n), 376(2)(f), and 506 of the Indian Penal Code, 1860 (“IPC”) and also under Sections 4, 6, 17, and 42 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act”).

2. The prosecution case, in brief, is that the informant, who is working as a caretaker at Shri Lochan Bal Vikas Kendra, Titwala, lodged a report alleging that accused No.3 – Preeti, was working

as Project Head at the said institution. The victim girl was a student of that centre. It is alleged that on or about 12 October 2022, between 10.00 p.m. to 11.00 p.m., the present applicant (accused No.1), who was also working in the said institution, called the victim to his office and committed forcible sexual intercourse with her. This act was not an isolated incident but allegedly continued for a period of one month. During this period, the applicant also threatened the victim with dire consequences, including killing her, if she disclosed the incident to anybody. It is further the case of the prosecution that though the informant reported the matter to accused Nos.2 and 3, they failed to take any steps against the applicant.

3. The learned Advocate appearing on behalf of the applicant has drawn attention to the order dated 26 March 2024 passed by a coordinate Bench of this Court in Criminal Bail Application No.1733 of 2023. By the said order, the Trial Court was directed to expedite the trial, with liberty to the applicant to renew his request for bail if the trial did not commence within six months. It is submitted that despite such directions, the trial has not commenced. The applicant has been in custody since 14 January 2023. Learned Advocate submits that the applicant has been falsely implicated. He further points out that the ossification test conducted by the prosecution indicated the age of the victim between 10 to 14 years, and that the medical report does not conclusively support the allegations of the prosecution. It is argued that, considering the long incarceration of the applicant and the fact that the trial is unlikely to conclude in the near future, the

applicant deserves to be enlarged on bail. In support of his submissions, he has relied upon the decisions of the Hon'ble Supreme Court in *Hussain & Another vs. Union of India* [2017 SCC OnLine SC 235]; *Balvinder Singh vs. State of Punjab & Anr.* [2024 SCC OnLine SC 4354]; as well as judgments of this Court in *Babaso @ Babasaheb Jalinder Balshankar vs. State of Maharashtra* (Criminal Bail Application No.2372 of 2024, decided on 12 December 2024) and *Ravi Suryakant Lagade vs. State of Maharashtra* (Criminal Bail Application No.1569 of 2025, decided on 28 April 2025).

4. Per contra, the learned APP appearing for the State and the learned Advocate appointed to represent the victim opposed the application. They submit that the present application being the second one, unless there is any material change in circumstance, the applicant cannot claim bail as a matter of right. They point out that the victim, at the time of the incident, was only nine years old and a student at the institution where the applicant was working as caretaker. On 12 October 2022, the applicant allegedly called the victim into his office and committed forcible sexual intercourse upon her, which continued for about a month. He also threatened her with death if she revealed the incident. It was only after a new caretaker was appointed that the matter came to light and a report was lodged. The FIR contains sufficient details of the acts attributed to the applicant.

5. It is further submitted that the institution itself is established for the welfare of children from economically weaker backgrounds, who are provided food, clothing, and education free of cost. The

applicant, being in a position of trust, has gravely misused his authority. The statement of the victim stands supported not only by her medical examination but also by her statement recorded under Section 164 of the Cr.P.C. Moreover, the documents on record clearly indicate that the date of birth of the victim is 31 March 2013, thereby establishing that she was below ten years of age at the relevant time. In view of the gravity of the allegations and the available material, they pray for rejection of the bail application.

6. I have carefully considered the submissions of the learned Advocate for the applicant, the learned APP for the State, and the learned Advocate appearing for the victim. I have also perused the FIR, statements of the victim, medical report, and other material placed on record.

7. At the outset, it is to be noted that this is the second bail application preferred by the applicant. The earlier application was considered by the coordinate Bench of this Court, which, by order dated 26 March 2024, had directed the Trial Court to expedite the trial with liberty to the applicant to renew the request for bail only if the trial did not commence within six months. The said liberty does not mean that bail has to be granted automatically; the Court is required to examine whether there is any substantial change in circumstances and whether the nature of accusations and supporting material justify release.

8. The allegations in the present case are of serious nature. The victim is a girl child who, as per documents, was born on 31 March 2013. Thus, on the date of the alleged incident, she was hardly

nine years old. The applicant was working as caretaker in the institution which was meant for the welfare and education of poor children. Instead of protecting the children, the applicant is alleged to have betrayed the trust and subjected the victim to repeated sexual assault for almost a month. The allegations also show that he threatened the child with dire consequences if she disclosed the incident. Such conduct, if proved, strikes at the very root of morality and shakes the conscience of the society.

9. The submission of the applicant that the ossification test shows age between 10 to 14 years does not carry much weight, when documentary proof of the date of birth is available on record. Medical opinion about age cannot override the documentary evidence. Further, the victim's statement under Section 164 Cr.P.C. is consistent and gives a detailed account of the acts committed by the applicant. The medical examination report may not conclusively prove the offence but does lend support to the prosecution case.

10. The reliance placed by the learned Advocate for the applicant on the judgments cited is clearly distinguishable on facts. In those cases, the main consideration before the Court was the delay in commencement of the trial and the long period of custody suffered by the accused. However, the present matter stands on a different footing. The allegations here are under the POCSO Act and relate to a minor girl of tender age. In such cases, the Court cannot view the delay in isolation, but has to keep in mind the gravity of the offence, the position of responsibility and trust held by the accused, and the extreme vulnerability of the child victim.

The applicant, being caretaker in the institution, was in a position where children were expected to feel safe and protected. Misuse of such fiduciary position by committing sexual assault upon a child shakes the confidence of society in such institutions and has far-reaching consequences.

11. It is true that under Article 21 of the Constitution, every accused has a fundamental right to speedy trial, and prolonged incarceration without progress of trial may weigh in favour of grant of bail. But this right has to be harmoniously balanced with the equally important right of the victim, particularly a child, to live with dignity, safety, and psychological security. When allegations involve repeated sexual assault on a girl child of nine years, coupled with threats to her life, the balance tilts heavily towards protecting the victim and ensuring that the accused does not misuse liberty to influence, threaten, or traumatize the victim further.

12. Considering the gravity of the allegations, the age of the victim, the material collected by the prosecution, and the fact that this Court has already once considered the applicant's request, I am of the opinion that no case is made out for grant of bail. Mere delay in commencement of trial, in absence of any other mitigating circumstance, cannot tilt the balance in favour of the applicant in such heinous offences.

13. Hence, the following order is passed:

- (i) The Criminal Bail Application stands rejected.

(ii) It is clarified that the Trial Court shall make all endeavour to expedite the trial and conclude the same at the earliest.

(iii) Observations made herein are prima facie and limited to the consideration of bail. The Trial Court shall not be influenced by these observations while deciding the matter on merits.

14. Accordingly, the bail application stands rejected.

(AMIT BORKAR, J.)