

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.566 OF 2025

Omkar Ramashray Yadav	...Applicant
<i>Versus</i>	
The State of Maharashtra & Anr.	...Respondents

Mr. Shivshankar D. Patil, for the Applicant.
Ms. A. S. Gotad, APP, for the Respondent-State.
Mr. Pankaj Khopade, PSI attached to Alore Shirgaon Police Station,
present.

CORAM: MADHAV J. JAMDAR, J.
DATED : 2nd APRIL 2025

PC:-

1. Heard Mr. Patil, learned Counsel appearing for the Applicant and Ms. Gotad, learned APP appearing for the Respondent-State.

2. This is the second Bail Application. The first Bail Application bearing Bail Application No.1689 of 2023 has been allowed to be withdrawn by this Court by order dated 11th March 2024. By the said order, the Applicant was granted liberty to file a fresh Bail Application after a period of 10 months, if there is no substantial progress in the trial. Pursuant to the said liberty, this Bail Application is filed.

3. The relevant details are as follows:

1.	C. R. No.	113 of 2021 dated 29.12.2021
2.	Date of registration of F.I.R.	29/12/2021
3.	Name of Police Station	Alore-Shirgaon Police Station, Chiplun, Dist. Ratnagiri
4.	Sections invoked	376, 376(2) (1) and 376-E of the Indian Penal Code, 1860 (“ IPC ”); 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (“ POCSO Act ”)
5.	Sections Applied in Charge-sheet	376(2) and 376(3) of the IPC; 4, 6, 8 and 10 the POCSO Act.
6.	Date of incident	June-July- 2021
7.	Date of arrest	11/01/2022
8.	Date of filing of Charge-sheet	18/02/2022

4. It is the submission of Mr. Patil, learned Counsel appearing for the Applicant that the relationship if any, with the victim is consensual and therefore, offence under Section 376(2)(1) of the IPC read with Sections 4, 6, 8 and 10 of the POCSO Act is not made out. It is the further submission of Mr. Patil, learned Counsel that there is considerable delay in filing the FIR and the Applicant is incarcerated since 11th January 2022 and even after a period of

about 3 years and 3 months, there is no progress in the trial. Therefore, the Applicant is entitled to be released on bail. To substantiate the said contentions raised, Mr. Patil, learned Counsel, relied on the following decisions:

- i. Order dated 4th October 2024 of the Supreme Court in the case of *Rup Bahadur Magar @ Sanki @ Rabin vs. State of West Bengal*¹
- ii. Order dated 17th March 2021 of a learned Single Judge in the case of *Pratik Vilas Shelar vs. The State of Maharashtra & Anr.*²
- iii. Order dated 15th November 2022 of a learned Single Judge in the case of *Faizan Wahid Baig vs. The State of Maharashtra*³

1 Criminal Appeal No.4144 of 2024
2 Bail Application No.2726 of 2019
3 Bail Application No.3372 of 2021

- iv. Order dated 5th January 2024 of a learned Single Judge in the case of *Nitin Damodar Dhaberao vs. State of Maharashtra*⁴
- v. Order dated 22nd August 2023 passed by a learned Single Judge in the case of **Avinash Subhash Kamble Vs. The State of Maharashtra**⁵
- vi. Order dated 25th September 2023 passed by learned Single Judge in the case of **Malhari Bapu Gavli Vs. The State of Maharashtra and Anr.**⁶.
- vii. Order dated 13th February 2025 passed by learned Single Judge in the case of **Mohammed Ajaran Khan Vs. The State of Maharashtra and Anr.**⁷.

5. On the other hand, Ms. Gotad, learned APP submits that the offence is very serious as the Applicant was the teacher conducting Taekwondo classes. She submits that the age of the victim is 13

4 Criminal Application (BA) No.718 of 2023

5 Bail Application No.642 of 2023

6 Bail Application No.683 of 2023

7 Bail Application No.4621 of 2024

year and the victim was found pregnant and there is positive DNA report. She further submits that although the State of Maharashtra is taking steps to conduct the trial expeditiously, the Applicant is taking adjournments on one ground or the other. Therefore, there is delay in conducting the trial. She therefore, submitted that the Bail Application be rejected.

6. Before considering the rival contentions, it is necessary to set out the prosecution case.

As per the prosecution case, the mother of the victim noticed certain changes in the body of the victim and therefore, she purchased a pregnancy kit from medical shop and she performed victim's pregnancy test and the said test was positive. In spite of questioning, the victim did not disclose to the mother about the incident. Thereafter, on 26th December 2021, the Informant-mother took the victim at Sir J.J. Hospital, Mumbai and while travelling from Chiplun to Mumbai, the victim told the Informant-mother that the Applicant i.e. teacher of said Taekwondo classes took her for trekking and without her consent, sexually assaulted her. The FIR was registered on 29th December 2021. The medical

termination of pregnancy was carried out and for that purpose, Writ Petition (L) No.48 of 2022 has been filed in this Court. The Division Bench of this Court by order dated 4th January 2022, allowed the medical termination of pregnancy. In the said order, it is mentioned that the said 13 years old minor victim of sexual assault is at 28 weeks of pregnancy and after obtaining the report from the Medical Panel, the medical termination of pregnancy was allowed. During investigation, the DNA samples were collected and DNA report specifically concludes that the victim and the Applicant to be biological parents of the baby. The victim supported the prosecution case in her statement dated 21st January 2022 recorded under Section 164 of the Code of Criminal Procedure, 1973 (“CrPC”).

7. Although it is the submission of Mr. Patil, learned Counsel that there is delay in lodging the FIR, however, that can be only one of the factor to be taken into consideration while considering the application seeking bail.

8. As per the settled legal position the following parameters are inter alia required to be taken into consideration while considering prayer for grant of bail :

- a) Nature and gravity of circumstances in which offence was committed;
- b) Position and status of accused with reference to the victim and the witnesses;
- c) Likelihood of accused fleeing from justice;
- d) Likelihood of accused tampering with witnesses;
- e) History of the case as well as of its investigation.

It is also a settled legal position that the Court is not required to enter into a detailed analysis of the evidence at the stage of consideration of Bail Application.

9. The Hon'ble Supreme Court in the decision of ***Ram Govind Upadhyay vs. Sudarshan Singh***⁸ has held as follows :

“4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are

⁸ (2002) 3 SCC 598

only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

*(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but **there ought always to be a prima facie satisfaction of the court in support of the charge.***

*(d) Frivolity in prosecution should always be considered and it is only the element of genuineness **that shall** have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”*

(Emphasis added)

10. Thus, if the Applicant's case is considered on the above parameters, it is clear that the Applicant was teacher of the victim. The victim was 13 years old at the relevant time. At the relevant time, the Applicant was 25 years old. The prosecution case clearly shows that the Applicant has committed penetrative sexual assault

on the victim on more than one occasion and made the child pregnant. The factual aspect that the DNA report is positive which confirmed that the victim and the Applicant to be biological parents of the baby *prima facie* shows that the Applicant is involved in the crime. The Applicant was the teacher of the victim. Thus, by applying the above parameters, no case is made out for grant of bail on merits.

11. In fact, as recorded in the order dated 11th March 2024 passed by this Court in earlier Bail Application No.1689 of 2023, it is specifically recorded that as the Court is not inclined to grant bail, the Bail Application has been withdrawn. Thus, even on earlier occasion on merits, this Court was not inclined to grant bail.

12. Mr. Patil, learned Counsel of the Applicant has relied on number of orders passed by the Supreme Court and this Court. The said decisions will be considered hereinafter:-

(i) As far as the decision of the Supreme Court in the case of ***Rup Bahadur Magar*** (supra) on which learned Counsel appearing for the Applicant has relied on, there is considerable

delay in conducting the trial, out of about 24 witnesses to be examined only 3 have been examined and as there are no antecedents, the bail is granted. However, from the said Order, offence involved is not made clear.

(ii) As far as the decision of the learned Single Judge in the case of ***Pratik Vilas Shelar*** (supra), it is recorded in paragraph No.8 of the said Order that the medical reports and the Forensic Science Laboratory report together leads to infer that *prima facie*, allegations of penetrative sexual assault by the Applicant and the co-accused on the victim was not likely.

(iii) In the case of ***Faizan Wahid Baig*** (supra), the learned Single Judge has recorded that the age of minor was 15 years and 4 months, the accused in that case was from the same neighbourhood, the victim in her statement stated that love relationship developed between the Accused and the victim. Thus, the learned Single Judge has recorded that the relationship was consensual.

(iv) As far as the decision in the case of ***Nitin Damodar Dhaberao*** is concerned, it is observed that although the victim in that case is also of 13 years and therefore her consent is not relevant, however, the statement recorded by the Investigating Officer showed that the victim left her house at her own accord on the pretext of bringing the book from a friend and did not return back at home and she joined the company of the Accused and also admitted her love relationship with the Accused in her statement.

(v) In **Avinash Kamble** (supra), the victim was earlier in relationship with the friend of the accused. They broke up the relationship, thereafter the victim started relationship with the Applicant and therefore learned Single Judge has held that the possibility of the consensual relationship can not be ruled out.

(vi) In **Malhari Bapu Gawli** (supra), the victim was 17 years and 8 months of age, victim after attaining the majority resided with the accused for about 6 months and in said facts, the learned Single Judge granted bail.

(vii) In **Mohammed Khan** (supra), the victim is 16 years old and accused was 22 years old and both of them were in relationship for 2 years.

The above discussion clearly shows that none of the orders on which Mr. Patil, learned Counsel has relied are applicable to the present case. In the present case, as noted herein above, the Applicant is teacher of the victim and she has been subjected to penetrative sexual assault on more than one occasion and as a result the Applicant made the child of about 13 years pregnant as a consequences of the sexual assault.

13. As far as the contention that the Applicant has completed about 3 years and 3 months and still there is no progress in the trial, it is required to consider the Roznama (Pages 249 to 293) annexed to the affidavit dated 19th March 2025 of Mr. Bharat Tukaram Patil, Assistant Police Inspector attached to Alore Shirgaon Police Station, Dist. Ratnagiri. Learned APP points out that the trial is being delayed as adjournments were sought on number of occasions by the Applicant. She submits that on 10th May 2024, the Applicant took time for engaging new Advocate and

thereafter, atleast on 9 dates adjournments were sought for filing Vakalatnama of new Advocate. Thereafter, PW.1 and PW.2 were examined by the learned Trial Court on 13th December 2024, however the said new Advocate declined to cross-examine those witnesses. Thereafter, again another new Advocate has been engaged on 9th January 2025. Thereafter, on number of occasions time was sought to cross-examine PW.1 and PW.2 and now the trial is at the stage of recording cross-examination of PW.1. Thus, perusal of the record shows that when the Applicant came to know that the trial will start, the Applicant has delayed the trial by seeking adjournments. Although the Applicant is incarcerated since 3 years and 3 months, the applicant is considerably responsible for the same as adjournments are taken on behalf of the Applicant on number of occasions.

14. This is a case where the Applicant who is teacher of about 25 years committed aggravated penetrative sexual assault on his student i.e. victim of 13 years and made the child pregnant as a result of the aggravated penetrative sexual assault. Thus, the offence involved is very serious under Section 376 (2)(f)(n) and 376(3) of the IPC read with Section 4, 6, 8 and 10 of the POCSO

Act. The minimum punishment for offence under Section 376(3) of I.P.C. is not less than 20 years, however, maximum punishment is life imprisonment. As noted herein above, on the touchstone of the parameters for grant of bail, the Applicant is not entitled to be released on bail and as far as delay in trial is concerned, in fact the Applicant himself has sought adjournment atleast on 14 occasions after the commencement of the trial.

15. Accordingly, no case is made out for grant of bail. The Bail Application is rejected.

16. The learned Trial Court is requested to conclude the trial expeditiously as the victim of 13 years was subjected to aggravated penetrative sexual assault.

17. It is clarified that the observations made in this Order are only for the purpose of consideration of the Bail Application and the learned Trial Court to decide the trial without influenced by the observations made in this Order.

BHALCHANDRA
GOPAL
DUSANE

[MADHAV J. JAMDAR, J.]

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