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

CRIMINAL BAIL APPLICATION NO. 625 OF 2025

Hanuman @ Hanya Parshuram Patil

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondents

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- Mr. Vaibhav R. Gargade, Advocate for Applicant.
- Mr. Sukanta Karmakar, APP for Respondent No. 1 – State.
- Mr. Saurish S. Shetye, Advocate for Respondent No. 2.
- Mr. R.B. Kedane, PSI, Kashigaon Police Station.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 22, 2025.

P.C.:

1. This is an Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Regular Bail in connection with C.R.No.353 of 2024 registered with Kashigaon Police Station for offences punishable under Sections 64 and 64 (2) (m) of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS') read with Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO') read with Sections 66E and 67 of the Information Technology Act, 2000. Applicant is arrested on 21.10.2024 and is incarcerated for more than 6 months.

2. FIR is filed on 21.10.2024, *inter alia*, alleging that in January 2020 Applicant residing in her neighbourhood was introduced by her

friend named Asma and thereafter they started meeting each other on a daily basis after which Applicant expressed his feelings for her and proposed the idea of getting married to which she responded affirmatively. She has alleged that thereafter they both started meeting at Sameer Horse Stable where Applicant forced her to consume alcohol and they had physical relations on multiple occasions. She has stated that when Applicant started avoiding marriage talks, she refused to meet him however he threatened to publically viral her obscene photographs and videos if she did not concede to his demands. She has stated that when she went to meet the Applicant he denied any plan of getting married to her. Thereafter prosecutrix's family shifted to Kajupada area however on 20.10.2024 Applicant repeatedly tried contacting her and when she refused to meet him he threatened her by sending an obscene picture of her and immediately deleted it. She has stated that Applicant had sent an obscene picture of her to their common friend Asma and posted a story of her obscene picture on his Instagram account to harass her. Thereafter prosecutrix informed her parents and FIR was lodged.

3. Mr. Gargade, learned Advocate for the Applicant would submit that prosecutrix was 16 years old and Applicant was 21 years old at the time of the alleged incident and were well acquainted with each other since 2020, four years prior to the filing of the FIR as Applicant resided in the neighbourhood. He would submit that

prosecutrix in her statement has admitted that they were in a love relationship since 2020. He would submit that prosecutrix willingly on her volition without any lure or force met Applicant without informing her parents and had physical relations on multiple occasions stretching over a period of more than 4 years 10 months which itself shows no sign of force or violence alleged by the prosecution.

3.1. He would submit that there is a delay of 4 years 10 months in the filing of the FIR which is unexplained however in the interregnum prosecutrix has not made any allegation regarding any forceful act or coercion against Applicant.

3.2. He would submit that Applicant is 25 years old toady and does not have any criminal antecedents. He would submit that investigation is completed, charge-sheet is filed commencement and completion of trial in the near foreseeable future is bleak. Hence he would urge the Court to allow the present Application in the above facts.

4. Mr. Karmakar, learned APP would persuade me to consider the age of prosecutrix since she was a minor at the time of incident and would contend that her consent would not matter. He would submit that prosecutrix underwent an ossification test in which her age is shown to be 16 +- 6 months at the time of incident. He would submit that the accusations levelled against Applicant are serious in nature.

He would fairly argue that in so far as maturity of the person is concerned, it would be directly proportional to the age of the person in today's times. He would submit that facts of the case as delineated will have to be examined by the Court for consideration as placed on record in the present case. He would submit that there is every likelihood that Applicant exploited the vulnerability of prosecutrix in the facts of the present case and induced her to keep sexual relations with him under the pretext of marriage and committed forceful acts. He would submit that as prosecutrix and Applicant reside in the same vicinity the possibility of Applicant influencing and threatening prosecutrix and witness cannot be ruled out. Hence he would submit that the Application be rejected.

5. Mr. Shetye, learned Advocate appointed through Legal Aid to espouse the cause of Respondent No. 2 – prosecutrix would adopt the submissions advanced by Mr. Karmakar. He would additionally submit that Applicant under the pretext of marriage lured prosecutrix in a relationship and assaulted her. He would submit that he also manipulated her into keeping sexual relations by threatening her with her obscene photographs captured without her consent. He would submit that even when prosecutrix shifted to Kajupada he kept contacting her family members and threatened her which ultimately compelled her to file the complaint against him. He would submit that granting bail to Applicant would pose an imminent danger to the

prosecutrix and would urge that the Application be rejected.

6. I have heard Mr. Gargade, learned Advocate for the Applicant, Mr. Karmakar, learned Advocate for Respondent No.1 - State and Mr. Shetye, learned Advocate for Respondent No.2. I have perused the record of the case placed before me.

7. *Prima facie* it is seen that FIR in the present case is filed on 21.10.2024. At the time of incident, Applicant was 21 years old and prosecutrix was 16 years old. *Prima facie* reading of the FIR and the witness statements appended to the Application show that the Applicant confessed her love for the prosecutrix as far back as in 2020 which was positively affirmed by her. Prosecutrix's own statement appended along with the FIR in fact states so. It is *prima facie* seen that Applicant and prosecutrix were well acquainted with each other and were regularly in touch with each other since the year 2020. It is further seen that prosecutrix without the knowledge, consent and without informing her parents or family members regularly met Applicant at Sameer Horse Stable, and had physical relationship with him. It is *prima facie* seen that there is a clear dichotomy in her statement recorded in the FIR dated 21.10.2024 appended at page No. 44 and her statement recorded during her Medical Examination recorded on 21.10.2024 appended on page No.64 when read at page No. 66 which displays a completely different narrative and infact

admits consensual physical relations between them. *Prima facie* the Medical Examination Report of prosecutrix does not record any injury on the prosecutrix and hence does not corroborate the prosecution case. This itself shows and reflects that there was no sign of coercion or force by Applicant. On perusal of the statements it is seen that prosecutrix willingly consented to the consensual physical relationship between them as stated by her in her statements. Applicant was 21 years old and prosecutrix was 16 years old. They at this age had a love relationship is *prima facie* evident from the record of the prosecution case and statement of the prosecutrix.

8. The prosecution side has also persuaded the Court to consider the presumption under Section 29 of the POCSO Act to contend that unless the contrary is proved, the said presumption will have to be accepted by the Court even at the bail stage.

9. This Court is not oblivious of the fact that there is a statutory presumption under Section 29 of the POCSO Act. However it does not mean that the prosecution version has to be accepted as gospel truth in every case. Presumption does not mean that the Court cannot take into consideration *prima facie* facts of the particular case which are evident from the face of record.

10. Court is of the opinion that presumption would come into play only when prosecution is able to bring on record facts that would

form the foundation for the presumption. Otherwise, all that the prosecution would be required to do is to raise some allegation against the accused and to claim that the case projected by it is true. The Court will have to be on guard to see that the application of presumption without advertent to the essential facts shall not lead to injustice. The presumption under Section 29 of the POCSO Act is not absolute. Attention in this regard is invited to the decision of High Court of Kerala in the case of *Joy Vs. State of Kerala Represented through the Public Prosecutor*¹. The relevant paragraphs are reproduced thus:-

"9. Mere delay in reporting the matter to the authorities concerned, especially sexual assault on a minor girl, is immaterial and it would not be fatal to the prosecution case. However, in the instant case, it is not the delay alone that is significant. The significant fact is that the complaint was given to the authorities concerned only two weeks after the mother received the lawyer notice from the petitioner claiming a huge amount as professional fees. This raises suspicion on the prosecution case against the petitioner. When the victim had disclosed the matter to her mother in July, 2018, one would have expected the mother to report the matter to the authorities concerned much earlier than 22.09.2018. The fact that she reported the matter only after receiving a lawyer notice from the petitioner assumes significance.

10. This court is not oblivious to Section 29 of the Act which contains a legislative mandate that the court shall presume commission of the offences by the accused unless the contrary is proved. Section 29 of the Act states that where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and 9 of the Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. The court shall take into consideration the presumption under Section 29 of the Act while dealing with an application for bail filed by a person who is accused of the aforesaid offences under the Act (See State of Bihar v. Rajballav Prasad, (2017) 2 SCC 178 : AIR 2017 SC 630).

11. However, the statutory presumption under Section 29 of the Act does not mean that the prosecution version has to be

¹ 2019 SCC OnLine 783.

accepted as gospel truth in every case. The presumption does not mean that the court cannot take into consideration the special features of a particular case. Patent absurdities or inherent infirmities or improbabilities in the prosecution version may lead to an irresistible inference of falsehood in the prosecution case. The presumption would come into play only when the prosecution is able to bring on record facts that would form the foundation for the presumption. Otherwise, all that the prosecution would be required to do is to raise some allegations against the accused and to claim that the case projected by it is true. The courts must be on guard to see that the application of the presumption, without advertent to essential facts, shall not lead to any injustice. The presumption under Section 29 of the Act is not absolute. The statutory presumption would get activated or triggered only if the prosecution proves the essential basic facts. If the accused is able to create serious doubt on the veracity of the prosecution case or the accused brings on record materials which would render the prosecution version highly improbable, the presumption would get weakened. As held by the Apex Court in *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694 : AIR 2011 SC 312, frivolity in prosecution should always be considered 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 anticipatory bail. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. It should necessarily depend on facts and circumstances of each case in consonance with the legislative intention."

- 11.** Attention is drawn to the decision of High Court of Kerala in the case of **XXXXXX Vs. State of Kerala Represented through the Public Prosecutor and Ors²**. The relevant paragraphs are reproduced thus:-

"19. Before parting with the judgment, we will also deal with the appellant's contention based on Section 29 of the POCSO Act. Section 29 is extracted herein below:

"29. Presumption as to certain offences.— Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved."

20. It is the submission of the learned counsel for the appellant based on Section 29 of the Act that reverse burden is

² CRA(V) No. 19 of 2020 decided on 24.02.2022.

cast on the accused to prove that they have not committed the offences under Sections 3, 5, 7 and 9 of the Act, the only precondition being that the accused is prosecuted for committing or abetting or attempting to commit any of the offences above referred. According to the learned counsel, the accused persons herein failed to discharge the reverse burden and therefore, they are liable to be convicted for the offences alleged. We cannot accept the above contention of the learned counsel. The argument, if accepted on its face value, is pregnant with the peril of accepting every prosecution charge, where offences under Sections 3, 5, 7 and 9 of the Act are canvassed, irrespective of its merits. Section 29 only creates an exception to the ordinary rule of innocence available to the accused in a criminal trial and puts the onus on the accused to rebut the presumption and establish his innocence. However, this presumption will operate only if the foundation to the prosecution case is laid by leading legally admissible evidence. **The statutory presumption under Section 29 cannot be understood to mean that in every case when a person is prosecuted for the specified offences, the prosecution version should be taken as gospel truth. The presumption will not mitigate the primary duty of the prosecution to establish the foundational facts constituting the offence, which duty is static on the shoulders of the prosecution. Once the same is done, the burden shifts to the accused by virtue of Section 29 of the Act to prove that he had not committed or abetted or attempted to commit the offence, as the case may be.** Our conclusions afore referred are in accord with the following judgments of the Hon'ble Supreme Court, where presumption under various statutes have been analysed and interpreted: (1) **K.Veerawami v. Union of India** [(1991) 3 SCC 655], (2) **State of Maharashtra v. Wasudeo Ramachandra Kaidalwar** [(1981) 3 SCC 199], (3) **Noor Aga v. State of Punjab** [(2008) 16 SCC 417], (4) **Kumar Exports v. Sharma Carpets** [(2009) 2 SCC 513], (5) **Abdul Rashid Ibrahim Mansuri v. State of Gujarat** [(2000) 2 SCC 513], (6) **Chandran & Others v. State of Kerala and Others** [AIR 2011 SC 1594], (7) **Naresh Kumar v. State of Himachal Pradesh** [AIR 2017 SC 3859] and (8) **Gangadhar @ Gangaram v. State of Madhya Pradesh** [AIR 2020 SC 3656]. These decisions were taken note of and discussed by a learned Single Judge of this Court in **Justin @ Renjith & Another v. Union of India** [ILR 2020 (4) Ker 679]. To the same effect is the judgment of another learned Single Judge of this Court in **David v. State of Kerala** [2020 (4) KHC 717 : 2020 CrLJ 3995]. We, therefore, reject the said contention of the appellant on the legal premise. On factual premise also, we find that the accused persons have rebutted the presumption under Section 29 by virtue of the evidence and circumstances already discussed, which were given due weightage in confirming the impugned judgment.

12. In so far as offences punishable under Sections 4, 5, and 6 of POCSO Act (special law) are concerned, it may be stated that the provisions of this law are, though, stringent in nature, however it would not deter the Court to grant or refuse bail in order to secure the ends of justice more so when the trial has not commenced despite a long hiatus and the case has been pending trial before the trial Court for close to 4 years.

13. In the facts of the present case, attention is drawn to the decision of this Court (Coram: Mridula Bhatkar, J.) in the case of ***Sunil Mahadev Patil Vs. The State of Maharashtra***³ to contend that consensus of the prosecutrix who is below the age of 18 years is a mitigating circumstance for Trial Court to consider. In furtherance to the above, Court has laid down certain specific guidelines after taking into consideration relevant cases as also the ethos and development of the age of the young offenders in the Indian Society in general. Court in paragraph Nos.8, 9,11 and 12 has laid down certain principles which I find it apt to be reproduced hereinbelow for consideration of bail in such Applications. Paragraph Nos. 8, 9, 11 and 12 read thus:-

“8. It is to be noted that the case of S. Varadarajan was decided in the year 1967 when the women were not enjoying the freedom which today the women have. Albeit the Hon'ble Supreme Court then has taken a pragmatic view and has acquitted Varadarajan. Now we come across such cases everyday. If a girl is a minor between the age group of 15 to 18 years and if it can be safely inferred that her consent was obvious, then it is a mitigating circumstance. Some trial Courts

3 Bail Application No. 1036 of 2015, decided on 03.08.2015.

dealing with such Bail Applications, especially after Nirbhaya case, started taking a strict approach and the accused are denied the bail only on the ground that the prosecutrix being minor below 18 years, her consent is immaterial, therefore, in the case of rape on such minor, no bail can be granted. This is a matter of concern.

9. In view of the increasing offences against the women especially of rape, the legislature and judiciary both found it obligatory to deal these offences with severe punishment and women can be protected if the laws are made rigorous. Therefore, report of Justice Verma Committee was accepted and necessary and significant amendments were made in these two sections. A wrong doer is to be punished, guilty is to be convicted. However, at the stage of bail, the Court has to consider prima facie under what circumstances the offence is committed by the accused. In the Criminal law, the Court cannot ignore the intention or motive behind the act and that is an important factor in the commission of offence so also to decide the quantum of sentence at the end of trial, so in the case of bail.

10. ...

11. Today teenagers are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and a woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship. Sexual urge differs from person to person and there cannot be any mathematical formula in respect of sexual behavioral pattern of teenagers, as biologically whenever the child turns into puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all considered as a sexual maturation. Therefore, some sects with view to regularize sexual behaviour of the community have acknowledged this biological factor and therefore, the early age marriages are performed in some religions or communities. Taking into consideration this social and biological factors, the law makers have considered the age of 15 as a age of consent when the marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such cases.

12. The overall considerations while deciding such applications can be summed up as -

When a boy and a minor girl are in love with each other and chose to live together without consent of their parents, then the following factors are to be considered:

- (i) What is the age of the prosecutrix, who is minor.
- (ii) Whether the act is violent or not.

(iii) Whether there are antecedents or not.

(iv) Whether the offender is capable of repeating the Act or not.

(v) Whether there is likelihood of threats or intimidation, if at all the boy is released.

(vi) Whether any chance of tampering with the material witnesses when their statements are recorded.

(vii) It is also to be taken into account in such cases that a boy in his early 20's deserves to get employment and to plan, stabilize and secure his future."

14. In so far as present case is concerned, it is *prima facie* borne out from the record that prosecutrix was 16 years old whereas Applicant was 21 years old, it is her own endorsement that she was in love with the Applicant and therefore she consented to the physical relationship between them in absence of any force on her are facts required to be considered. Facts of the present case indicate that prosecutrix had sufficient knowledge and capacity to know full import of what she was doing and had only thereafter voluntarily joined the Applicant. The tenure of their relationship according to prosecutrix was over more than 4 years and 10 months. Considering the *prima facie* facts of the case *vis-a-vis* the above judicial pronouncements, this Court is of the opinion that Applicant has made out a case for grant of bail.

15. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount;

- (ii) Applicant is permitted to furnish provisional cash bail of Rs.15,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.15,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and/or non Court working day, the Applicant shall mark presence on the next working day;
- (vi) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

(vii) Applicant shall not make any attempts to re-associate with the prosecutrix in any manner wither through a device or in-person and shall not reside in the jurisdiction of the Police Station wherein the prosecutrix is residing till the trial is concluded;

(viii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(ix) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(x) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

16. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

17. Fees of the learned Advocate Mr. Shetye, learned Advocate appointed through Legal Aid to represent and espouse the cause of Respondent No.2 shall be released by the Registry of this Court within

a period of one week from the date of presentation of a server copy of this order on compliance.

18. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

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by AJAY
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