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

CRIMINAL BAIL APPLICATION NO. 666 OF 2025

Ritesh Jitendra Hase

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondents

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- Mr. Sunny A. Waskar a/w. Ms. Harshada Morey, Shamish Marwadi, Bhavika Patil, Mr. Aditya Sawant, Advocates i/by Mr. Manish Kanojia for Applicant.
- Ms. Megha S. Bajoria, APP for Respondent No.1 – State.
- Ms. Mallika Sharma, Advocate for Respondent No.2 appointed through Legal Aid.
- Mr. Gujar, Pariavi Adhikari, PSI, Malad Police Station present.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 25, 2025.

P.C.:

1. Heard Mr. Waskar, learned Advocate for Applicant; Ms. Bajoria, learned APP for Respondent No.1 – State and Ms. Sharma, learned Advocate for Respondent No.2 appointed through Legal Aid.

2. This is an Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short '**BNSS**') seeking Regular Bail in connection with C.R. No.882 of 2024 registered with Malad Police Station for the offences punishable under Sections 137(2) and 64(1) of the Bhartiya Nyaya Sanhita, 2023 (for short '**BNS**') and Sections 4 and 8 of the Protection of Children from Sexual Offences

Act, 2012 (for short 'POCSO').

3. In the present crime, Applicant is a 20 year old college student studying in the 3rd year and prosecutrix – victim is also a 17 year old college student studying in her 1st year. First Information Report (FIR) is filed on 25.10.2024 by First Informant – mother against unknown person for kidnapping as the prosecutrix went missing from her house on 25.10.2024. According to prosecution case and as recorded in the statement of prosecutrix on 25.10.2024 when she was waiting for her College practicals inside her college which were postponed from 3:00 p.m. to 3:40 p.m., the Applicant approached her and asked her to accompany him to his house at Virar.

3.1. *Prima facie* statement of prosecutrix itself becomes a suspect because her practicals were advanced by 40 minutes despite which she on her own volition accompanied the Applicant from Goregaon to Virar by local train at his insistence. According to prosecution case, both Applicant and prosecutrix were acquainted with each other for the last 3 years and according to the statement recorded by prosecutrix which is duly corroborated by her own statement recorded during her Medico Legal Examination. She has stated that they both used to go out and roam together. It is alleged by prosecution that on 25.10.2024 they reached the Applicant's residence - flat in Virar at around 5:30 - 06:00 p.m. where he introduced her as his friend to his family members

namely his mother, father and younger sister who were present.

3.2. Thereafter she states that they all had dinner together and at about 11:00 p.m. the prosecutrix decided to spend the night at the Applicant's house. It is stated that the Applicant slept on the sofa in the hall whereas his father, mother, younger sister and prosecutrix slept inside the bedroom. It is stated that prosecutrix slept on the floor on a mattress provided to her and sometime at midnight Applicant approached her and they both had a physical encounter. Thereafter it is stated that on the following morning the prosecutrix left Applicant's house and was found at the Malad Railway Station by her mother when she was brought to the police station for recording her statement.

3.3. Admittedly the prosecutrix was carrying her mobile phone with her. However this case which is recorded in the FIR and statement of prosecutrix is in contradiction with her statement recorded during her Medico Legal Examination conducted on 27.10.2024 i.e. 2 days after the alleged incident. The said Medico Legal Examination statement is appended at page No.63 of Application wherein she has stated that they knew each other for the past 3 years having befriended on Instagram App and since September 2024 they were constantly in touch with each other and used to roam outside together.

3.4. Thereafter it is stated therein that in so far as the alleged incident is concerned, after they all went to sleep and at about 12:00 a.m. in the midnight Applicant came inside the bedroom and had a physical encounter with her. She has stated that thereafter mother of Applicant asked the Applicant to go and sleep outside the hall and later in the morning when she left their house to return back the Applicant slapped her and took her back to her house and at around 02:00 p.m. Applicant and his mother both brought to her college near Goregaon, met her mother after which all of them proceeded to the police station. This version narrated by prosecutrix is once again in contradiction with her statement recorded under Section 183 of the BNSS which when seen *prima facie* shows that on the morning of 26.10.2024 mother of Applicant had telephonic conversation with her mother.

4. I have heard Mr. Waskar, learned Advocate for Applicant; Ms. Bajoria, learned APP for Respondent No.1 – State and Ms. Sharma, learned Advocate for Respondent No.2 appointed through Legal Aid and with their able assistance perused the record of the case.

5. On an overall reading of the various statements referred to and relied upon by prosecution in support its case, it is seen that both Applicant and prosecutrix initially got acquainted with each other on Instagram App and developed friendship which evolved into a love relationship between them. This is *prima facie* evident from the

material placed on record in the charge-sheet.

6. *Prima facie* it is seen that their relationship was voluntarily as both were young college going students. It has come on record that on the date on which prosecutrix accompanied Applicant to his house at Virar she had a quarrel with her parents after which she had voluntarily left her home and was spending the day in her college, when it is alleged that Applicant came over to meet her and forced her to accompany him to Virar. Investigation is completed and recovery from Applicant is done to the effect that Investigating Officer has seized the photographs and messages exchanged between them namely Whatsapp chats. There is no any element of violence or force alleged by prosecutrix during the entire tenure of their association or during the alleged incident.

7. Considering the *prima facie* facts of the present case, assistance is drawn from the decision of the Supreme Court in the case of *S. Varadarajan v. State of Madras*¹ wherein the Supreme Court in paragraph No.2 has held thus:-

“2. Where a minor girl alleged to be taken away by the accused person, had left her father's protection knowing and having capacity to know the full import of what she was doing and voluntarily joined the accused, it could not be said that the accused had taken her away from the keeping of her lawful guardian within the meaning of section 361 of the Penal Code, 1860 (“IPC” for short). Something more had to be done in a case of that kind, such as an inducement held out by the accused person or an active participation by him in the formation of the intention either immediately prior to the minor

1 AIR 1965 942

leaving her father protection or at some earlier stage.”

8. Though the above referred case was decided well before the POCSO Act was enacted, this Court is well conscious of the presumption ingrained in Section 29 of the said Act and that argument on prosecutrix’s consent is irrelevant but *prima facie* if the statements of prosecutrix are read, it is clearly borne out that she has been consenting to the actions which is gathered from the record of the case.

9. In this regard attention is drawn to the decision of this Court (*Coram: Ms. Mridula Bhatkar, J.*) in the case of ***Sunil Mahadev Patil Vs. The State of Maharashtra***² 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 young offenders in the Indian Society in general. Court in paragraph Nos.8, 9, 11 and 12 of this decision laid down certain principles which I find it apt to reproduced hereinbelow for consideration of bail in such situations. 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

² Bail Application No. 1036 of 2015, decided on 03.08.2015.

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 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."*

10. Next the decision of this Court (Coram: Sandeep K. Shinde, J.) in the case of ***Anirudha Radheshyam Yadav Vs. The State of Maharashtra***³ is also relevant in the facts of the present case. Relevant paragraph No.4 is reproduced below for reference:-

"4.The conduct of the victim is indicative of the fact that she had left the home of her parents by her own will and that she had surrendered to the physical desires of the applicant out of her love and affection for him. It is not the case of the prosecution that the applicant had promised to marry her. Additionally, it is also not a case where under the misconception of the fact, she had served herself to the desire of the applicant for physical relations. No doubt, that the applicant, under the preview of POCSO Act, is a minor; however, the facts of the present case indicate that she had sufficient knowledge and capacity to know full import of what she was doing and had only thereafter voluntarily joined the complainant (applicant)."

11. 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

³ Criminal Bail Application No.2632 of 2019 decided on 09.01.2020

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.

12. 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*⁴. The relevant paragraph Nos.10 and 11 are reproduced thus:-

"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).

4 2019 SCC OnLine 783.

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

13. 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 Ors***⁵. 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

⁵ CRA(V) No. 19 of 2020 decided on 24.02.2022.

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 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.”

14. While considering Bail Application in such facts, Court feels that reform and rehabilitation of the under trial accused needs to be considered especially when age of the accused is young so that the accused gets an opportunity / or is given an opportunity to reform, rehabilitate and earn his livelihood honorably from the perspective of social integration. This is a chance which the Court must take considering the young age of accused. By considering this Court is not stamping approval of any of the actions of Applicant regarding the crime in question. Court is also equally conscious of the offence. The age of the Applicant is very young. He is a 3rd year student. He has no antecedents. His academic pursuits are placed on record. If the Applicant is incarcerated in prison further, there is every possibility that he might lose faith in the institution and society at large and may tread the path of criminality or would waste his life. Incarceration in prison statistically shows that it exposes many youth to abuse.

15. There are several harms of incarceration which are inflicted disproportionately on the youth. This is the reason why Court feels that any / every semblance of a chance towards a reformatory approach in punishment should be adopted, especially in the case of young offenders. Hence every opportunity or to that extent risk should be constructively taken by the Court in the case of young offenders –

accused before committing such accused to further custody and give such accused an opportunity to become a good citizen in the Society. These observations are only in the view of the young age of the Applicant before me and it is only a means to explore an alternative to incarceration so that the Applicant can become a good citizen.

16. Considering the overall facts in the present case as *prima facie* emanating from the prosecution record and the discrepancies noted and the fact that prosecutrix and Applicant are both staying in completely different areas in Mumbai, there would be no reason to believe that there will be any tampering of evidence or threatening of witnesses, Applicant's young age and he having deep roots in the Society as also having no criminal antecedents, in my opinion, Applicant can be released on bail.

17. Hence, Bail Application of Applicant is therefore allowed on 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) 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;

- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) 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;
- (v) 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;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court and deposit his passport, if any, with the concerned Investigating Officer;
- (vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and
- (viii) 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.

18. 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.

19. This Court appreciates the assistance rendered by Ms. Sharma, learned Advocate appointed through the Legal Aid to espouse the cause of Respondent No. 2. Her fees be paid by the High Court Legal Aid Services Authority as per rules on production of a server copy of this order and other compliances.

20. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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