

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 737 OF 2025

Tejas Sachin Shelke

...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

Mr. Ganesh Gupta a/w Ms. Roshini Naaz, Mr. Surya Prakash Gupta, Mr. Sahil Ghorpade, Mr. Madan Khansole, Ms. Priyanka Rathod i/b GG Legal Associates, learned Advocates for the Applicant.

Ms. Madhavi H. Mhatre, learned A.P.P. for the State/Respondent.

Ms. Kanchan Pawar, learned Advocate for Respondent No. 2.

CORAM : ASHWIN D. BHOBE, J.

DATE : 4th JULY 2025.

P.C. :

1. Heard Mr. Ganesh Gupta, learned Advocate for the Applicant, Ms. Madhavi Mhatre, learned A.P.P. for the State/Respondent and Ms. Kanchan Pawar, learned Advocate for Respondent No. 2.

2. By the present Application filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (“**BNSS**” for short), the Applicant is before this Court seeking regular bail in connection with Crime No. 572 of 2024 registered with Panvel City Police Station, Navi Mumbai for the offences punishable under Sections 64, 143(3), 143(4), 3(5), 336(2) and 340(2) of the Bharatiya Nyaya Sanhita, 2023 (“**BNS**” for short), Sections 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (“**PITA Act**” for short) and Sections 4, 8 and 12 of the Protection of Children from Sexual

Offences Act, 2012 (“POCSO Act” for short).

3. Mr. Ganesh Gupta, learned Advocate for the Applicant submits that the abovesaid crime is now registered as Special (POCSO) Case No. 195 of 2024 and is pending on the file of Additional Sessions Judge, Panvel.

4. There are 6 accused in the said crime. Applicant is Accused No. 5.

5. Criminal Bail Application at Exhibit-10 filed by the Applicant in Special (POCSO) Case No. 195 of 2024 was dismissed by the Court of Additional Sessions Judge at Panvel vide order dated 16th January 2025.

6. Case of the prosecution is that the victim in the present crime was brought from Bangladesh to Kolkata and thereafter to Mumbai by Accused No. 2. Accused No. 2 thereafter took the victim to the hotel and forced her into flesh trade. On 20th September 2024, the Applicant as a customer, had physical relationship with the victim for a price. The victim after the incident complained to Accused No. 2 of she being in pain. The abovesaid crime was registered and on the basis of statement of the victim, the Applicant was arrested on 29th September 2024 and since then he is in jail.

7. Mr. Ganesh Gupta, learned Advocate submits that even if the allegations in the crime are considered, the status of Applicant would be that of a customer. He submits that the material on record indicates that the victim was having Identity Card showing

her age as 22 years. He submits that as a customer and on the face of the Identity Card showing age of the victim as 22 years, the crime as alleged against the Applicant would not be tenable.

8. Ms. Madhavi Mhatre, learned A.P.P. for the State/Respondent submits that the Applicant though a customer, was aware of the age of victim. She submits that the Applicant knowing the fact that the victim being a minor and the Identity Card in her possession being a forged Identity Card, had physical relation with the victim as such, the offence against the Applicant is made out.

9. Ms. Kanchan Pawar, learned Advocate for Respondent No. 2 submits that the claim of Applicant being a customer is falsified. She submits that the Applicant was the friend of Accused Nos. 2 and 6 in the present crime. She submits that being a friend of Accused Nos. 2 and 6, the Applicant was and bound to be aware of the victim being a minor.

10. I have perused the records with the assistance of learned Advocates of the parties.

11. Applicant has been arrayed in the present crime in the capacity of he being the customer. Investigation records placed before me, do not indicate the Applicant having forced the victim in flesh trade.

12. Contention of Mr. Ganesh Gupta is that the Applicant was a customer and being a customer, he had visited the hotel alongwith the victim on an assurance that he would have sexual pleasure for a price. The contention advanced on behalf of the Applicant is that

he was unaware of the victim being a minor and he had taken the girl to enjoy the company of a woman for sexual pleasure for a price being paid by him.

13. In the case of *Babu S. v/s. State*¹, the Karnataka High Court has dealt with the role of the customer in the backdrop of case, which invokes Sections 3 to 6 of the PITA Act and Section 370 of the Indian Penal Code, 1860, holding that the term ‘trafficking’ of a person, as contemplated under Section 370 of the IPC would specifically contemplate exploitation by recruits, transports, harbours, transfers or receives, a person by using the mechanism set out therein and that engaging into such activity would amount to trafficking.

14. In the case of *Suresh Babu @ Arakkal Arjunan Suresh Babu v/s. The State of West Bengal and Anr.*², the Kolkata High Court has held that the person, who is found in alleged brothel as a customer, who visited the place to have sex with a sex worker in lieu of money and in the absence of any evidence that he is living on the earning of sex worker and/or that he is habitual visitor to such place cannot face charge under Section 370 of IPC.

15. In the case of *Mr. Amir Niyaz Khan v/s The State of Maharashtra and Anr.*³, this Court was dealing with an identical case like the facts in the instant case, wherein the Applicant was a customer having enjoyed the company of a woman for sexual pleasure for a price being paid by him to the other accused persons.

1 2022 SCC OnLine Kar 1529.

2 C.R.R. 2363 of 2019.

3 Criminal Bail Application No. 2638 of 2023 decided on 4th April 2024.

16. Mr. Ganesh Gupta, learned Advocate would be justified in his submission that the Applicant cannot be expected to know the age of a woman, moreso in the present facts of the case, where the victim had Identity Card showing her age as 22 years. *Prima facie*, I find force in the contentions of the Applicant. Charge-sheet in the present crime is filed. Applicant is a student aged 23 years. Involvement of the Applicant in the present crime being that of a customer and considering the facts and circumstances of the present case, the Applicant would be entitled for bail as his incarceration during the pendency of trial is not warranted.

17. In view of the above, the present Bail Application is allowed on the following conditions :-

- a. Applicant is directed to be released on bail in connection with Crime No. 572 of 2024 registered with Panvel City Police Station, Navi Mumbai for the offences punishable under Sections 64, 143(3), 143(4), 3(5), 336(2) and 340(2) of the BNS, Sections 4 and 5 of the PITA Act and Sections 4, 8 and 12 of the POCSO Act on executing P.R. Bond in the sum of Rs. 25,000/- (Rupees Twenty-five Thousand Only) with one or two sureties in the like amount to the satisfaction of the Additional Sessions Judge, Panvel.
- b. Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of accusation, so as to dissuade him from disclosing such facts to the Court or to any

police officer.

- c. Applicant shall not tamper with the prosecution witnesses and evidence in any manner.
- d. Applicant shall co-operate in the conduct of the trial and shall regularly attend the hearing of Special (POCSO) Case No. 195 of 2024, pending on the file of Additional Sessions Judge, Panvel, on each and every date, unless exempted from appearance.
- e. Applicant upon his release, within a period of three days from his release, shall furnish his cell phone number and residential address with proof to the Investigating Officer, Panvel City Police Station, Navi Mumbai and shall keep the same updated, in case of any change thereto.

18. Criminal Bail Application No. 737 of 2025 stands disposed of in the abovesaid terms.

[ASHWIN D. BHOBE, J.]

Digitally signed
by GITALAXMI
KRISHNA
KOTAWADEKAR
Date:
2025.07.04
20:09:26 +0530