

AGK

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

BAIL APPLICATION NO.767 OF 2025

Mohd Salim Munna Shaikh	... Applicant
V/s.	
The State of Maharashtra & Anr.	... Respondents

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Mr. Aditya Rai with Mr. Nitin Rai i/by Mr. Mayur Sosa
for the applicant.

Mrs. Shilpa G. Talhar, APP for respondent No.1-State.

Ms. Mallika Sharma for respondent No.2-victim
(appointed as Legal Aid).

CORAM : AMIT BORKAR, J.

DATED : AUGUST 22, 2025

P.C.:

1. By the present application filed under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”), the applicant seeks his release on regular bail in connection with Crime Register No.131 of 2019 registered with Kurar Police Station, Mumbai. The said crime is registered for offences punishable under Sections 376(D), 363, 354, 506, and 34 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) and under Sections 4, 6, 8, and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “POCSO Act”).

2. The prosecution case, as revealed from the complaint lodged by the mother of the victim girl, is that in the month of February

2019 the applicant along with other co-accused persons committed penetrative sexual assault upon the victim. While the applicant was committing such act, the victim resisted and raised shouts. At that time, the co-accused caught hold of her hands and gagged her mouth to prevent her from resisting. Thereafter, the co-accused also committed sexual assault on the victim. It is further alleged that even after a few days, the applicant and other accused persons again subjected the victim to penetrative sexual assault and they all threatened her not to disclose the incident to anyone.

3. On 26 March 2019, an incident occurred where some hot water accidentally fell on the body of the victim, due to which she sustained injuries. She was then taken to the hospital for medical treatment. During medical examination, the doctor noticed that the private parts of the victim appeared abnormally enlarged. When the doctor and relatives took her into confidence and enquired about it, the victim disclosed that she had been subjected to repeated sexual assault at the hands of the applicant and other co-accused.

4. Learned Advocate appearing for the applicant submitted that the applicant was arrested on 28 March 2019 and since then, he is behind bars. The charges in the case came to be framed only in December 2023, which clearly shows delay in trial. The prosecution has cited as many as 31 witnesses; however, till date not a single witness has been examined. It is therefore submitted that considering the prolonged incarceration of more than five years without progress of trial, the applicant's right to speedy trial guaranteed under Article 21 of the Constitution of India stands

infringed. The learned counsel further submitted that the applicant has no criminal antecedents and hence he deserves to be enlarged on bail.

5. On the other hand, the learned APP for the State, as well as the learned Advocate representing respondent No.2—the victim, strongly opposed the application. They submitted that the victim was 15 years of age at the time of incident, and hence the provisions of the POCSO Act are directly attracted. The allegations reveal repeated penetrative sexual assault, accompanied by threats to the victim. Considering the tender age of the victim, the gravity of the accusations, and the manner in which the offence has been committed, they submitted that the applicant does not deserve the concession of bail.

6. I have considered the rival submissions and perused the record of the case. It is not in dispute that the applicant has been in custody since 28 March 2019. Charges were framed only in December 2023, almost four years after the arrest. Even after framing of charges, the trial has not progressed and not a single witness out of the 31 cited has been examined till date. Thus, the applicant has undergone incarceration for more than five years without the trial commencing in real sense.

7. It is true that the offences alleged are serious in nature and involve the provisions of the POCSO Act. The allegations also show that the victim was a minor at the relevant time. However, while considering an application for bail, the Court is also bound to keep in mind the constitutional mandate flowing from Article 21 of the

Constitution of India. The right to speedy trial is not merely a statutory right but a fundamental right. Prolonged detention of an undertrial, when the trial is not likely to conclude within a reasonable period, defeats the very object of criminal justice.

8. In the present case, the delay cannot be attributed to the applicant. On the contrary, the material on record shows that despite the seriousness of allegations, the prosecution has not been able to bring the trial to its logical progress. The law laid down by the Supreme Court in *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713, and *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81, makes it clear that when the period of custody already undergone is long and the trial is not likely to be concluded in near future, the Court should lean in favour of granting bail subject to strict conditions.

9. The applicant does not have any criminal antecedents and there is nothing on record to suggest that he has misused liberty earlier. The apprehension of tampering with evidence or influencing the witnesses can be addressed by imposing stringent conditions. Thus, balancing the right of the victim and the seriousness of accusations on one hand, and the right of the applicant to speedy trial on the other, I am of the view that the applicant deserves to be released on bail.

10. Hence, following order is passed:

- i) The bail application is allowed;
- ii) The applicant is directed to be released on regular bail in connection with Crime Register No.131 of 2019 registered

with Kurar Police Station, Mumbai for offences punishable under Sections 376(D), 363, 354, 506, and 34 of the IPC read with Sections 4, 6, 8, and 12 of the POCSO Act, upon furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or more solvent sureties in the like amount, to the satisfaction of the Trial Court, subject to the following conditions:

- (a) The applicant shall not tamper with evidence, or directly or indirectly contact, influence, threaten, or intimidate any witness, particularly family members of the deceased.
- (b) The applicant shall not, in any manner, contact the victim or her family members, directly or indirectly.
- (c) The applicant shall not enter the territorial jurisdiction of Kurar Police Station, Mumbai until further orders, except for attending trial.
- (d) The applicant shall cooperate with the prosecution and attend all trial dates regularly, unless specifically excepted by the Trial Court.
- (e) The applicant shall not commit any offence or engage in any criminal activity during the pendency of the trial.
- (f) The applicant shall, at the time of furnishing surety, provide his current residential address and mobile number to the Investigating Officer as well as the Trial Court, and shall inform the Court in writing of any change in residence or

contact details during the pendency of the case.

(g) In case of any breach of the conditions mentioned above, the prosecution shall be at liberty to move for cancellation of bail.

11. The bail application is allowed and disposed of.

(AMIT BORKAR, J.)