

AGK

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

BAIL APPLICATION NO.829 OF 2025

Asha Nitin Pawar	... Applicant
V/s.	
The State of Maharashtra	... Respondent

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Mr. Adil Khan with Ms. Mariyah Khatkhatay and Ms. Shubi Syed for the applicant.

Mr. Sagar R. Agarkar, APP for the respondent-State.

Mr. Damgude, PSI and Mr. Bhosale, WPI, Wadala T.T. Police Station, are present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 12, 2025

P.C.:

1. By the present bail application filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 ("BNSS" for short), the applicant seeks his release on regular bail in connection with Crime Register No. 623 of 2024 registered with Wadala T.T. Police Station, Mumbai. The said crime has been registered for offences punishable under Sections 143(1), 143(3), 143(4), and 3(5) of the Bhartiya Nyay Sanhita ("BNS" for short).

2. As per the case of the prosecution, one Amar Sardar lodged a missing complaint stating that his son-in-law, Ganesh Purvaiyya, had three children, two daughters and one son, namely Shivam. In the last week of July 2024, Ganesh had left his two daughters with Amar Sardar but did not disclose anything about his son Shivam.

Thereafter, despite repeated attempts, Amar Sardar could not contact Ganesh Purvaiyya. This led to the lodging of a missing report regarding both Ganesh Purvaiyya and his son Shivam.

3. During investigation, it came to light that Ganesh Purvaiyya had contracted a second marriage and was residing at Andheri. Upon being traced and interrogated, Ganesh Purvaiyya allegedly revealed that he had sold his minor son Shivam to the present applicant/accused and one Sharif Shaikh through a lady named Asma Dastagir Shaikh. On the basis of this information, the present offence was registered.

4. Learned Advocate for the applicant submits that the applicant is innocent and has been falsely implicated in the crime. It is contended that the applicant is HIV positive and has two minor children of his own. No incriminating article has been recovered from him. He was not present when the alleged offence was committed. It is further submitted that the applicant was arrested on 2 September 2024, and that the minor child was never “sold” but was, in fact, adopted by one Rashmi at the instance of accused No. 1. On these grounds, it is argued that the applicant deserves to be released on bail.

5. Per contra, the learned APP strongly opposed the grant of bail. It is contended that the material collected during investigation indicates that the applicant had handed over the two-year-old boy to a lady named Rashmi at Bhubaneswar. Accused No. 1, who is the biological father of the child, allegedly sold the boy to the applicant and accused No. 4 through accused No. 2 for

a consideration of ₹1,60,000/-. The investigation further reveals that the applicant and accused No. 4 sold the child to Rashmi at Bhubaneswar.

6. The call detail records (CDR) analysis shows that the applicant was in regular contact with other co-accused persons during the relevant period. It is also on record that accused No. 5 has been arrested, and the minor boy was recovered at her instance from Bhubaneswar. A supplementary charge-sheet has been filed against accused No. 5. According to the prosecution, these facts clearly indicate the applicant's active participation in the offence of human trafficking, and hence, the bail application ought to be rejected.

7. I have carefully considered the rival submissions and perused the material placed on record. The nature and gravity of the offence alleged are of a serious kind, involving the sale and trafficking of a minor child, which strikes at the very root of societal and moral values. The law treats such offences with utmost seriousness, as they not only violate the rights of the child but also have far-reaching consequences on his life and future.

8. The material collected during the course of investigation, on a prima facie assessment, discloses that accused No. 1, who is none other than the biological father of 2 year old victim child, has allegedly sold his own son to the present applicant and accused No. 4 through the mediation of accused No. 2, for a cash consideration of ₹1,60,000/-. Such a transaction, if proved, would constitute a grave and deplorable act, amounting to trafficking of a

minor, which is prohibited not only under the Bhartiya Nyay Sanhita but also strikes at the core of the constitutional mandate under Article 39(e) and (f), which obligates the State to protect children from exploitation and moral abandonment.

9. The investigation further reveals that after obtaining the custody of the child, the applicant, in concert with accused No. 4, transferred or sold the child to one Rashmi at Bhubaneswar. This indicates a chain of dealings involving the victim child, which prima facie appears to be an organised network of child trafficking. The seriousness of this aspect is heightened by the fact that the recovery of the victim was effected from Bhubaneswar, Odisha, at the instance of accused No. 5, thereby showing that the offence transcended State boundaries, giving it an interstate dimension.

10. Additionally, the Call Detail Record (CDR) analysis forms an important piece of corroborative evidence at this stage. It shows that the applicant was in frequent telephonic contact with other co-accused persons during the relevant period. Such communication patterns, when seen in light of the alleged sale and recovery of the victim, lend further strength to the prosecution's case that the applicant was not a passive or incidental participant, but was actively involved in the trafficking process.

11. In cases of this nature, where a minor 2 year old child is allegedly treated as a commodity for monetary gain, the courts are expected to adopt a cautious approach in the matter of bail. The acts attributed to the applicant, if established, would fall within

the category of offences which not only shock the conscience of society but also have a lasting detrimental impact on the safety and dignity of the child victim. Prima facie, the role of the applicant appears to be deliberate, planned, and in active collusion with other accused persons.

12. The contention of the applicant that the child was merely adopted by Rashmi at the instance of accused No. 1 cannot be accepted at this stage, in view of the clear allegations, the recovery of the child from another State, and the monetary transaction disclosed during investigation. Human trafficking is an organised offence, often involving multiple participants at different levels, and the applicant's role, as emerging from the investigation, cannot be considered minor or peripheral.

13. Given the seriousness of the allegations, the role attributed to the applicant, and the fact that the investigation has revealed interstate movement of the victim child, there is a reasonable apprehension that if released on bail, the applicant may tamper with the prosecution witnesses or influence the ongoing proceedings. The principle that "bail is the rule and jail the exception" cannot be applied mechanically in cases where the offence is grave, involves exploitation of a child, and the evidence prima facie points to the active involvement of the accused.

14. In view of the above discussion, and considering the nature of the offence, the manner in which it has been committed, and the prima facie material available against the applicant, I am of the opinion that this is not a fit case for grant of bail.

15. Accordingly, the bail application stands rejected.

(AMIT BORKAR, J.)