

Shabnoor

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

BAIL APPLICATION NO. 924 OF 2025

Eqbal Gafur Shaikh @ Kalu

... Applicant

V/s.

State of Maharashtra & Anr.

... Respondents

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Mr. Prashant Pandey a/w Ridhina M., Swati Gupta,
Dinesh i/b Mr. Dattatray Pathak, for the applicant.

Ms. Prasanna P. Malshe, APP for the State – respondent
No.1.

Ms. Sherali S. Khan, for respondent No.2.

WPI Chopade, Mr. Palande, PSI, Trombay Police Station
are present.

CORAM : AMIT BORKAR, J.

DATED : JULY 21, 2025

P.C.:

1. The present bail application has been filed by the applicant under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking his release on bail in connection with Crime Register No. 430 of 2024, registered with Trombay Police Station. The applicant has been charged for the offence punishable under Section 64(2)(m) of the Bharatiya Nyaya Sanhita, 2023. In addition, he is also booked under Sections 4, 6, 9, 10, 12, and 17 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. As per the case of the prosecution, the victim/informant is a girl aged about 17 years and 4 months, and is the daughter of the complainant. It is alleged that in the year 2020, the cousin sister of the victim was admitted at J.J. Hospital, Mumbai, and during that time the victim was staying with her cousin. There, she came in contact with one Nadiya Shaikh, who is also arraigned as co-accused in the present crime. In the month of August 2024, the victim met Nadiya again and disclosed that she was in search of a job. Nadiya then asked her to visit her house. When the victim went there, she was served tea, and she was introduced to Nadiya's husband, namely Eqbal Shaikh @ Kalu. Both Nadiya and Eqbal inquired about the time when the victim remains alone at home, to which she replied that she is generally alone from 10:00 a.m. to 7:00 p.m., and she also shared her house address.

3. It is alleged that in the first week of July 2024, both Nadiya and Eqbal visited the house of the victim around 4:00 p.m. On that occasion, Eqbal sat beside the victim and began pressing her legs, and when the victim objected, Eqbal allegedly committed forcible sexual assault upon her. After this incident, Nadiya allegedly paid Rs. 3,000/- to the victim. It is further alleged that subsequently, the applicant and co-accused repeatedly visited the house of the victim and brought unknown persons with them, who also sexually assaulted the victim and offered her money, which she accepted. Thereafter, the complaint came to be lodged with the concerned police station. The applicant came to be arrested in connection with the said offence. The bail application moved by the applicant before the learned Sessions Court was rejected, and hence the

present application is filed before this Court.

4. The learned advocate appearing for the applicant has invited attention to the statements of witnesses, including that of the victim. He has submitted that the first alleged incident of sexual assault is stated to have occurred in the first week of July 2024, but the First Information Report (FIR) was lodged only in the first week of September 2024, which shows an unexplained delay of about two months. He further pointed out that according to the prosecution itself, the applicant and co-accused paid a certain amount of money to the victim, who at the time of the alleged incident was aged 17 years and 5 months. It is submitted that even according to the prosecution case, a second incident of sexual intercourse took place in the second week of July 2024, yet no complaint was lodged immediately thereafter, and the FIR was registered only after a considerable delay, which indicates that the act might have been consensual. It is further argued that the applicant is a young person and in the given circumstances, deserves to be enlarged on bail.

5. On the other hand, the learned Additional Public Prosecutor as well as the learned Advocate appointed to represent the victim have strongly opposed the prayer for bail. They submitted that though there is some delay in lodging the FIR, the same stands sufficiently explained by the victim in her statement, wherein she has stated that she was threatened with dire consequences of the applicant if she disclosed the incidents to anyone. Due to this fear, she kept silent and refrained from immediately reporting the matter to the police. They further argued that since the victim was

a minor at the time of the alleged acts, even assuming that there was some form of consent, such consent is of no legal consequence in the eyes of law. They therefore submitted that this is not a fit case for granting bail and the application deserves to be rejected.

6. I have carefully considered the submissions advanced by the learned advocate for the applicant, the learned Additional Public Prosecutor, and the learned counsel for the victim. I have also gone through the material placed on record, including the statements of the victim and other witnesses, and the contents of the First Information Report.

7. It is not in dispute that the age of the victim, as per the prosecution case, was 17 years and 4 months at the time of the alleged incident. It is also not disputed that the first incident of alleged sexual assault is stated to have taken place in the first week of July 2024. However, the First Information Report came to be lodged only in the first week of September 2024, i.e., after a gap of nearly two months. Though the prosecution has tried to explain this delay by stating that the victim was under threat, such explanation is required to be appreciated at the stage of trial after proper examination and cross-examination of witnesses.

8. Prima facie, it appears from the victim's own statement that even after the first incident, the victim accepted money from the accused persons. It also appears that, despite having opportunities to raise alarm or disclose the incident earlier, the same was not done. The FIR does not disclose any immediate complaint being made to the parents, neighbours, or any other person. Though the

gravity of the allegations cannot be undermined, the circumstances of delay in reporting, the conduct of the victim as appearing from her own statement, and the overall facts require deeper scrutiny during trial.

9. Furthermore, the applicant is in custody since his arrest and custodial interrogation is already complete. The chargesheet appears to have been filed. Therefore, further detention of the applicant may not be necessary for the purpose of investigation.

10. This Court is conscious of the seriousness of the allegations and the object of the POCSO Act to protect children from sexual offences. However, at the stage of deciding bail, this Court is only required to assess whether, on the face of the record, a case for continued detention is made out. In the facts of the present case, a case for grant of bail is made out, subject to conditions that would ensure the presence of the applicant at trial and safeguard the interest of the prosecution and the victim.

11. Hence, the following order :

(i) The Bail Application stands allowed.

(ii) The applicant shall be released on cash bail of ₹25,000/- (Rupees Twenty-Five Thousand only) in connection with Crime Register No. 430 of 2024 registered with Trombay Police Station for offences punishable under Sections 64(2)(m) of BNS, Sections 4, 6, 9, 10, 12 and 17 of POCSO Act.

(iii) Within a period of 6 weeks from the date of his release,

he shall furnish a Personal Bond of ₹25,000/- (Rupees Twenty-Five Thousand only) with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court, subject to the following conditions:

(a) The applicant shall not directly or indirectly make any contact with the family members of the victim or any prosecution witnesses, and shall not tamper with the evidence in any manner.

(b) The applicant shall report to the concerned police station once in every month (i.e., on 1st day of every month) between 10:00 a.m. to 12:00 noon, until further orders.

(c) The applicant shall furnish his current residential address and mobile number to the Investigating Officer, and shall inform the Investigating Officer of any change in address or contact details forthwith.

(d) The applicant shall not enter the jurisdiction of Trombay Police Station, except for the purpose of marking his presence, as directed by the Investigating Officer or the Court.

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

12. The Bail Application stands disposed of accordingly in above terms.

(AMIT BORKAR, J.)