

Shabnoor

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

BAIL APPLICATION NO.1523 OF 2025

SHABNOOR
AYUB
PATHAN

Digitally signed by
SHABNOOR AYUB
PATHAN
Date: 2025.08.05
10:42:08 +0530

Kamalkishor Babulal Arya

... Applicant

V/s.

State of Maharashtra

... Respondent

Mr. Atharva Jagtap for the Applicant.

Mrs. Mahalakshmi Ganapathy, AP for the State –
respondent No.1.

Ms. Ashwini Achari, for respondent No.2 (Appointed as
Legal Aid).

CORAM : AMIT BORKAR, J.

DATED : AUGUST 4, 2025

P.C.:

1. The applicant has filed this bail application under Section 439 of the Code of Criminal Procedure, 1973, praying for his release on bail in Crime Register No. 782 of 2019 registered at Tulinj Police Station. The applicant stands accused of offences under Sections 376(A) and 376(B) of the Indian Penal Code, 1860. Further, charges under Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) have also been framed against the applicant.

2. The complainant, who is the mother of the victim child, lodged a report against the applicant alleging that he committed sexual assault upon her 9-year-old daughter. At the time of the

alleged incident, the applicant was 70 years old. The complaint states that the applicant forcibly committed sexual intercourse with the minor victim when she was brought to his house. Both the applicant and the victim's family reside in the same residential building. The applicant was taken into custody on 30th June, 2019.

3. The learned counsel appearing for the applicant has argued that his client has remained in judicial custody for the past six years. He contends that such prolonged detention coupled with inordinate delay in concluding the trial has resulted in grave violation of the applicant's fundamental right to speedy trial guaranteed under Article 21 of the Constitution of India. Therefore, the applicant deserves to be released on bail as further continuation of his imprisonment without expeditious trial would amount to denial of his constitutional rights.

4. On the other hand, the learned Additional Public Prosecutor has opposed the bail application stating that the examination of witnesses has been substantially completed with only one remaining witness, namely the victim's mother, yet to be examined. She has further submitted that since the applicant and the victim's family are residing in the same building, there exists a genuine apprehension that the applicant may intimidate or influence the victim's mother if released on bail. She has therefore prayed that instead of granting bail, appropriate directions may be issued to ensure time-bound completion of the trial proceedings.

5. Having carefully considered the submissions made by both sides and after perusing the case record, this Court finds that while the applicant's concern regarding prolonged detention is legitimate, the peculiar circumstances of this case warrant a balanced approach.

6. The offences alleged against the applicant are of grave and serious nature, involving sexual assault on a minor child under the POCSO Act. Such offences have far-reaching consequences on the victim and society at large. The Court notes that the applicant was 70 years old at the time of alleged commission of offence, while the victim was merely 9 years old, which shows a significant power imbalance and vulnerability of the victim.

7. Though the applicant has been in custody for six years, which is indeed a matter of concern, the Court cannot ignore the fact that only one witness remains to be examined to conclude the trial. The victim's mother is a crucial witness whose testimony is essential for the just adjudication of the case.

8. The proximity of residence between the applicant and the victim's family creates a genuine apprehension of influence or intimidation. Releasing the applicant at this critical juncture, when the most important witness is yet to depose, may jeopardize the fair conduct of trial and cause further trauma to the victim's family.

9. However, the Court is equally mindful of the applicant's fundamental right to speedy trial under Article 21 of the Constitution. The prolonged detention without conclusion of trial is indeed a violation of this constitutional guarantee.

10. After balancing the competing interests and considering the facts and circumstances of this case, this Court is of the considered view that while the bail application cannot be granted at this stage, appropriate directions must be issued to ensure expeditious completion of the trial.

11. Accordingly, the bail application is hereby rejected with the following directions:

12. The Trial Court is directed to conclude the examination of the remaining witness, namely the victim's mother, within four weeks from the date of this order.

13. Upon completion of witness examination, the Trial Court shall proceed with the arguments and conclude the trial within eight weeks thereafter.

14. In case of any delay in compliance of the above timeline due to circumstances beyond the control of the Trial Court, a fresh application for bail may be filed by the applicant, which shall be considered on its own merits.

15. The Investigating Officer and the Prosecution are directed to ensure the presence of all necessary witnesses and documents for expeditious completion of the trial.

16. The Bail Application stands disposed of.

(AMIT BORKAR, J.)