

*Shabnoor*

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

**BAIL APPLICATION NO. 1731 OF 2025**

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Rahim Mohammed Shami Pathan ... Applicant  
**V/s.**  
The State of Maharashtra ... Respondent

Mr. Bhanudas L. Jagtap i/b Mr. Ashish B. Jagtap, for the applicant.

Ms. Rajashree V. Newton, APP for the State – respondent No.1.

Mr. Viral Mukte, for respondent No.2(Appointed as Legal Aid).

Mr. Bajrang Desai, PSI, Samta Nagar Police Station is present.

**CORAM : AMIT BORKAR, J.**

**DATED : AUGUST 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 (BNSS), seeking his release on bail in connection with Crime Register No. 698 of 2024 registered at Samta Nagar Police Station. The offences alleged against the applicant are punishable under Sections 64(1), 75 and 352 of the Bharatiya Nyaya Sanhita, 2023 (BNS), and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. The prosecution case, in brief, is that on 8th August 2024 at about 8:00 p.m., the complainant's two daughters were playing outside their residence. The complainant came out of the house to check on them and at that point, she allegedly saw the accused inserting his hand inside the undergarment of her younger daughter and moving his finger into her private parts. On being noticed by the complainant, the accused withdrew his hand, gave evasive answers, hurled abuses, and fled from the spot. Based on these allegations, a complaint was lodged, and the present crime came to be registered. The applicant had earlier approached the learned Sessions Court for bail; however, the said application came to be rejected. Being aggrieved thereby, the applicant has now approached this Court.

3. Learned Advocate appearing on behalf of the applicant has sought to draw attention to certain inconsistencies in the statements of the complainant. It is urged that in the First Information Report (FIR), the complainant stated that she herself witnessed the act of the applicant. However, in her statement recorded under Section 164 of the Cr.P.C. (now BNSS), she stated that it was the co-victim, Disha, who first came running to inform her about the act of the applicant. According to the learned Advocate, this constitutes a material discrepancy which goes to the root of the matter and renders the prosecution story doubtful.

4. Learned Advocate has further submitted that the incident allegedly occurred on 8th August 2024, but the FIR came to be lodged only on 22nd August 2024. The delay of 14 days in lodging the FIR, according to the learned counsel, has not been

satisfactorily explained. It is contended that the explanation sought to be given – namely that the complainant was under fear of the applicant – is a vague and general assertion which does not inspire confidence. The delay, therefore, casts a serious doubt on the truthfulness of the allegations. It is also contended that the applicant has been falsely implicated due to previous enmity, and that he was arrested immediately on 8th August 2024 itself. Hence, it is urged that the applicant deserves to be released on regular bail.

5. Per contra, the learned APP has strongly opposed the application. It is submitted that the delay in lodging the FIR, in the facts of the present case, cannot be viewed as fatal. In cases involving sexual offences, particularly against minor children, delay in lodging the FIR is not uncommon, as parents or guardians often hesitate to approach the police immediately due to social stigma, fear, and trauma. The learned APP submits that the delay is adequately explained by the complainant's assertion that she was afraid of the intimidating nature of the accused.

6. It is further contended by the learned APP that the allegations against the applicant are grave and serious in nature. The victim is a minor child, and the nature of the offence alleged strikes at the very dignity and bodily integrity of the child. In such circumstances, the argument of discrepancy in statements is a matter of appreciation of evidence during trial, and not a ground sufficient to release the accused at this stage. The learned APP has therefore urged that considering the gravity of the offence and the interest of the child victim, the applicant is not entitled to bail.

7. I have carefully considered the rival submissions advanced by the learned Advocate for the applicant and the learned APP for the State. I have also perused the material placed on record.

8. It is no doubt true that the allegations made against the applicant are serious in nature and relate to offences punishable under the provisions of the BNS as well as the POCSO Act. However, at the stage of considering bail, the Court is not required to conduct a mini-trial. The Court has to see whether there exist reasonable grounds for believing that the applicant is guilty, the nature of evidence collected, and whether his further detention in custody is necessary.

9. On a prima facie reading of the FIR and the statement under Section 164 BNSS, it is evident that there are material inconsistencies in the version of the complainant. In the FIR, she claimed to have witnessed the alleged act herself, whereas in her later statement she attributed the information to the co-victim Disha. Such variation in the narration of events raises a reasonable doubt at this stage and is a matter that will require deeper appreciation of evidence during the trial.

10. Further, the incident is alleged to have taken place on 8th August 2024, but the FIR came to be registered after a delay of 14 days, i.e. on 22nd August 2024. Though the complainant has explained the delay by attributing it to fear of the applicant, such explanation appears general in nature. Delay in lodging the FIR, particularly when it extends to nearly two weeks, is a circumstance which cannot be completely ignored while considering the

question of bail.

**11.** The applicant has been in custody since 8th August 2024, i.e. for more than one year. The trial has not yet commenced, and considering the nature of the charges, it is not likely to conclude in the immediate future. Prolonged pre-trial incarceration without progress in trial would be unjustified and would amount to punishment before conviction, which is impermissible in law.

**12.** At this stage, there is no material placed before the Court to show that the applicant, if released on bail, would tamper with the evidence or influence witnesses. Appropriate conditions can be imposed to ensure that the applicant does not interfere with the course of justice.

**13.** Taking into consideration the overall facts and circumstances, including (i) the inconsistencies in the statements, (ii) the unexplained delay in lodging the FIR, and (iii) the period of custody already undergone by the applicant, I am of the opinion that the applicant has made out a case for grant of bail.

**14.** In view of the above discussion, the following order is passed:

(i) The Bail Application is allowed.

(ii) The applicant shall be released on cash bail of ₹25,000/- (Rupees Twenty-Five Thousand only) in connection with Crime Register No. 698 of 2024 registered with Samta Nagar Police Station. The applicant is charged for offences punishable under Sections 64(1), 75, 352 of

BNS and Section 4, 6, 8, 12 of POCSO Act,

(iii) Within a period of eight weeks from the date of his release, the applicant shall furnish a Personal Bond of ₹25,000/- (Rupees Twenty-Five Thousand only) along 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 tamper with evidence, or directly or indirectly contact, influence, threaten, or intimidate any witness, particularly family members of the victims.

(b) The applicant shall attend all proceedings before the Trial Court regularly, unless exempted by the Court on valid grounds supported by sufficient cause.

(c) The applicant shall not enter the jurisdiction of Samta Nagar Police Station, except for the purpose of taking away his belongings and to mark his presence. He shall report to the said police station on the first Monday of every month between 10:00 a.m. and 12:00 noon, until further orders.

(d) The applicant shall not leave the territorial jurisdiction of the Trial Court without its prior written permission.

(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.

**15.** It is clarified that the observations made herein are only for the purpose of deciding this bail application, and the trial Court shall not be influenced by the same while conducting the trial.

**16.** The Bail Application stands disposed of in above terms.

**(AMIT BORKAR, J.)**