

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2041 OF 2025**

Venkattesh Sharanappa Mustagir

...Applicant

Versus

State of Maharashtra and Anr.

...Respondents

Mr. Veerdhaval Kakade, *for the Applicant.*

Ms. Poonam P Bhosale, *APP for the Respondent No.1 - State.*

Ms. Keral Mehta, *appointed Advocate for the Respondent
No.2.*

I.O. - PI -Anil Mule a/w PSI Vaibhav Khade, D. N. Nagar
Police Station, Mumbai, present.

CORAM DR. NEELA GOKHALE, J.
DATED: 06TH NOVEMBER 2025

PC:-

1. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No.60 of 2023 dated 19th January, 2023, registered with the D.N. Nagar Police Station, for the offences punishable under Sections 376AB and 506 of the Indian Penal Code, 1860 ('IPC') and under Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO').

2. The victim at the time of the incident was a minor aged 10 years of age. It is the grievance of the complainant, the mother of the minor girl that her daughter's friend's father called her daughter and another friend home on the pretext of checking their homework notebooks. At that time, he sexually assaulted the minor girl and threatened to beat her if she discloses this fact to anybody else. After a period of one and half month when the minor victim was suffering acute stomach pain, the complainant i.e. victim's mother took her to the doctor who conducted Sonography on the minor victim and at that time it was revealed by the minor victim that she was sexually assaulted by her friend's father. Accordingly, the FIR was registered and the Applicant was arrested.

3. The Applicant filed a bail application before the learned Special Judge, POCSO, Borivali Division, Dindoshi, Mumbai, however, by order dated 16th January, 2025, said bail application was rejected. Hence, the Applicant is before this Court for the relief as prayed.

4. Mr.Kakde, learned counsel for the Applicant, submits that the entire prosecution story is concocted. There is a gross and inordinate delay in registration of the FIR. He also submits that the informant has claimed that the victim told her about the incident only on 8th January, 2023 when the incident occurred on 7th December, 2022, and hence it cannot be believed that the incident, in any fact took place. He further submits that even if the case is taken as it is, no offence can be said to be committed and even then the offence punishable under Sections 376AB of the IPC as well as Section 4 of the POCSO Act is not made out. Finally, he submits that the Applicant is incarcerated for the period of 2 years 9 months and 19 days and it doesn't seem likely that the trial will conclude within a short time. In these circumstances, Mr. Kakde urges this Court to release the Applicant on bail.

5. Ms.Bhosale, learned APP, representing the State, has tendered on record the statement of the victim recorded under Section 164 of the Cr.PC. She has also drawn to my attention the statement of the victim's mother, her three

friends as well as the statement of one of the friend's mother. She submits that all the statements are consistent with the complaint made by the statement of the victim. She has also drawn my attention to the medical report which records an old tear in the hymen of the minor victim. She thus, resists the grant of bail to the Applicant.

6. Ms. Mehta, learned appointed Advocate for Respondent No.2 also supports the arguments of Ms. Bhosale. She further submits that the next date of the trial is 24th November, 2025 on which date Court is to hear the arguments of the parties on charges to be framed. She submits that the victim is only 10 years of age and suffered serious trauma. Hence, she resists the bail application.

7. I have heard learned counsels for the respective parties and perused the record with their assistance.

8. I have gone through the statement of the victim tendered on record by Ms. Bhosale. The statement is consistent with her earlier statement given to the police. I

have also perused the statement of the friends of the victim who have also stated that the victim had confided in them regarding the said incident and the sexual assault by the Applicant. I have also perused the statement of the victim's friend's mother, which also corroborates the story of the other witnesses. I have seen the medical report in respect of the minor victim. Although there is no new injury revealed in the medical report, however, the findings indicate that there are old healed multiple tear in the hymen of the victim. I have also perused the statement of the complainant i.e. mother of the victim, as told by her to the medical doctor of the Municipal Corporation of Greater Mumbai. The same is also consistent with the the other statements.

9. While bail is indeed the rule and jail is the exception, this general principle must be balanced against the special circumstances of each case, particularly when dealing with offences against children. The Supreme Court has repeatedly emphasized that in cases involving sexual offences against minors, courts must exercise extreme caution while

granting bail. The triple test of bail - (i) prima facie case, (ii) possibility of the accused fleeing from justice, and (iii) likelihood of the accused tampering with evidence or influencing witnesses – must be applied with special rigor in POCSO cases.

10. In the present case, the prosecution has established a prima facie case against the Applicant based on the victim's statement, medical evidence, and other corroborative materials. The possibility of the accused influencing the minor victim or other witnesses cannot be ruled out, particularly given the serious nature of the allegations.

11. This Court observes that while every accused person has a fundamental right to liberty, this right is not absolute and must be balanced against the larger interest of justice, public order, and the protection of victims, particularly when the victims are minors. The POCSO Act represents the legislative intent to provide stringent protection to children

from sexual offences. Courts, as guardians of justice, have a solemn duty to ensure that this legislative objective is not defeated by a liberal approach to bail in such serious cases. The Court further observes that the trauma suffered by child victims in sexual assault cases is immense and long-lasting. The criminal justice system must be sensitive to their plight and ensure that they are not subjected to further victimization through intimidation or influence by the accused persons.

12. Bail Application is rejected.

13. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the learned Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

(DR. NEELA GOKHALE, J)