

AGK

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

BAIL APPLICATION NO.2220 OF 2025

Farid Khalid Shaikh	... Applicant
V/s.	
The State of Maharashtra & Anr.	... Respondents

Ms. Shivani S. Kondekar for the applicant.

Mr. Sagar R. Agarkar, APP for respondent No.1-State.

Mr. Sumedh S. Modak for respondent No.2 (appointed as Legal Aid).

Mr. M.D. Shirke, PSI, Kharghar Police Station, Navi Mumbai, is present.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 13, 2025

P.C.:

1. Through this bail application filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "BNSS"), the applicant seeks regular bail in Crime Register No.384 of 2021 registered at Kharghar Police Station. The case is registered for offences under Sections 354, 376(2)(i), and 376(2)(n) of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and Sections 3, 4, 5(n), 6, 7, and 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO Act").

2. As per the prosecution case, the mother of the victim girl lodged a complaint stating that her minor daughter was sexually

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assaulted and raped by the applicant. The applicant is the paternal uncle of the victim and resides in the same building where the victim lives with her family. It is noted that the father of the victim is in judicial custody in a MCOCA case.

3. The allegations state that on the date of the incident, the victim's mother had gone to Panvel Court in connection with her husband's case. During her absence, the applicant came to the victim's house and sexually assaulted her. He was about to rape her when the victim's brother suddenly arrived home. On seeing the brother, the applicant ran away from the spot. The victim's brother immediately informed their mother over phone. When the mother returned home, the victim disclosed to her that the applicant had been sexually assaulting and raping her for the past several years and had threatened her with serious consequences if she revealed this to anyone. Based on this, a complaint was registered at Kharghar Police Station.

4. The learned Advocate for the applicant argued that the applicant has been falsely implicated and that no such incident occurred. She pointed out that the victim's statement recorded under Section 164 shows major inconsistencies when compared with the initial complaint under Section 165, particularly regarding the presence of the brother during the last incident of sexual intercourse. She further submitted that the brother's statement, when compared with the mother's statements recorded under Sections 161 and 164 of the Criminal Procedure Code, 1973, shows inconsistencies about his presence at the time of incident. Drawing attention to the medical reports, she submitted

that the medical examination conducted on 9th November 2021 does not support the allegation of sexual intercourse, whereas the examination conducted on 10th November 2021 shows evidence of sexual intercourse, which is contradictory. She highlighted that the applicant was arrested on 12th November 2021 and there is no likelihood of the trial being completed in the near future. On these grounds, she prayed for granting regular bail to the applicant.

5. On the other hand, the learned APP and the learned Advocate appointed to represent the victim opposed the bail application. They submitted that the victim's father is in jail in a MCOC Act case and the informant (victim's mother) was occupied in arranging bail for her husband. Taking advantage of this situation, the applicant, who is a married person aged 28 years, forcefully committed sexual intercourse with the victim who was approximately 11 years old at the time of the last incident and around 8 years old when the first incident allegedly occurred. They emphasized that since the applicant is the victim's uncle, there is every possibility that if released on bail, he will influence and pressurize both the informant and the victim. They further submitted that the applicant has a criminal history with three similar previous cases registered against him.

6. Drawing attention to the medical examination report dated 10th November 2021, they submitted that the local examination revealed redness in the perineum, recent tear in hymen, white discharge from private parts, and redness in the fourchette and posterior commissure. The medical expert has opined that there was an attempt of sexual intercourse. Therefore, the medical

evidence fully supports and corroborates the contents of the First Information Report. Moreover, the statements of the victim and her mother recorded under Section 164 are consistent with their statements recorded under Section 161 of the Criminal Procedure Code, 1973. Hence, they submitted that the applicant is not entitled to be released on regular bail.

7. Having heard the learned Advocates appearing for both sides and after carefully perusing the material on record, this Court finds that the present bail application deserves to be rejected for the following reasons.

8. The allegations against the applicant are of extremely serious nature involving sexual assault and rape of a minor child who was approximately 8 years old when the alleged incidents first began. The offences are punishable under Sections 354, 376(2)(i), and 376(2)(n) of IPC and various provisions of the POCSO Act. These are heinous offences against a child and strike at the very foundation of a safe and secure childhood. The victim was repeatedly subjected to sexual assault over a period of several years, which demonstrates the depravity and persistence of the alleged criminal conduct. Such offences cannot be treated lightly and require serious consideration before granting any relief to the accused.

9. What makes this case particularly grave is the relationship between the applicant and the victim. The applicant is the paternal uncle of the victim and resided in the same building as the victim's family. He was in a position of trust and authority vis-à-vis the

minor victim. Instead of protecting the child, he allegedly exploited his position and the vulnerability of the family situation to commit these heinous acts. The father of the victim was in judicial custody in a MCOCA case, and the mother was preoccupied with legal proceedings for securing his bail. The applicant took advantage of this vulnerable situation when the family was going through a crisis. This breach of familial trust is an aggravating factor that weighs heavily against the grant of bail.

10. The victim was merely 8 years old when the first incident allegedly occurred and was around 11 years old at the time of the last incident. The victim is still a minor child. At such a tender age, the psychological and physical trauma caused by repeated sexual assault is immeasurable and long-lasting. The law mandates special protection for children, and courts must be particularly careful while dealing with cases involving child victims of sexual offences. The tender age of the victim and the repeated nature of the alleged offences demonstrate the vulnerability of the victim and the callousness of the applicant.

11. The allegations reveal that the applicant did not commit a single isolated act but engaged in a pattern of sustained criminal conduct spanning several years. The victim disclosed that the applicant had been sexually assaulting and raping her since the past few years. This demonstrates premeditation, persistence, and a complete disregard for the physical and mental well-being of a minor child. Such prolonged and repeated offences indicate a dangerous criminal propensity that cannot be overlooked while considering the question of bail.

12. The material on record reveals that the applicant has criminal antecedents with three similar previous cases registered against him. This fact is extremely significant and demonstrates that the applicant has a history of committing similar sexual offences. The existence of such antecedents shows that the applicant is a habitual offender and poses a serious threat to society, particularly to minor children. The protection of society and potential victims must be paramount in the mind of the Court while considering bail applications in such cases.

13. The medical examination conducted on 10th November 2021 reveals clinching evidence supporting the prosecution case. The examination showed redness in the perineum, recent tear in the hymen, white discharge from private parts, and redness in the fourchette and posterior commissure. The medical expert has opined that there was an attempt of sexual intercourse. This medical evidence is consistent with and corroborates the allegations made in the First Information Report and the victim's statement. The medical findings cannot be brushed aside and constitute strong prima facie evidence against the applicant.

14. The statements of the victim and her mother recorded under Section 164 of the Criminal Procedure Code are consistent with their statements recorded under Section 161 of the Criminal Procedure Code. This consistency demonstrates the truthfulness and reliability of their version of events. The victim has consistently maintained her allegations throughout the investigation. While the defence has pointed out certain minor inconsistencies, the same are not material enough to disbelieve the

prosecution case at this stage, particularly when the core allegations remain consistent.

15. Given that the applicant is the paternal uncle of the victim and resides in the same building as the victim's family, there is every reasonable apprehension that if released on bail, the applicant will try to influence, threaten, or pressurize the victim and her family members. The victim has already stated that the applicant had threatened her with dire consequences if she disclosed the incidents to anyone. The proximity of residence and the familial relationship create a real and substantial risk of witness tampering and interference with the course of justice. The mother of the victim, who is the informant, may also come under pressure considering the family relationship and the vulnerable position of the family.

16. Considering the criminal antecedents of the applicant involving similar offences and the sustained pattern of criminal conduct revealed in the present case, there is a reasonable apprehension that if released on bail, the applicant may commit similar offences. The protection of children in society is of paramount importance, and the Court cannot take the risk of releasing an accused person who has demonstrated a propensity for committing sexual offences against minors.

17. While it is true that the applicant was arrested on 12th November 2021 and that there may be delay in completion of trial, this factor alone cannot be a ground for granting bail in a case of this nature. The serious nature of the allegations, the position of

trust of the accused, the vulnerability of the victim, and the reasonable apprehension of tampering with evidence are far more significant considerations. The right to speedy trial cannot override the need to protect the victim and ensure that justice is done in cases involving sexual offences against children.

18. The learned Advocate for the applicant has pointed out certain inconsistencies regarding the presence of the victim's brother during the last incident and discrepancies between medical examinations conducted on 9th November 2021 and 10th November 2021. However, these are matters that require detailed examination during trial with the benefit of cross-examination of witnesses and complete evidence. At the stage of considering bail, the Court has to only see whether there is prima facie case against the accused and whether there are grounds for refusing bail. Minor inconsistencies in statements and variations in medical examination do not automatically entitle an accused to bail, particularly in cases involving serious sexual offences against children. These inconsistencies, if any, can be effectively dealt with during trial.

19. While the personal liberty of the applicant is undoubtedly an important consideration, the same has to be balanced against the larger interests of justice, protection of the victim, prevention of tampering with evidence, and protection of society at large. In cases involving sexual offences against children, the scales of justice must tilt in favor of protecting the victim and ensuring that the trial proceeds without any interference or intimidation. The apprehension of the victim and her family members, the serious

nature of allegations, and the criminal antecedents of the applicant collectively outweigh the consideration of personal liberty at this stage.

20. The POCSO Act has been enacted with the specific objective of protecting children from sexual offences and providing for a child-friendly justice delivery system. The Act recognizes the special vulnerability of children and mandates stringent punishment for offences of sexual assault and rape of children. Courts, while dealing with cases under the POCSO Act, must be guided by the legislative intent of providing maximum protection to child victims. The grant of bail to an accused in a POCSO case must be considered with utmost caution and circumspection.

21. While it is true that the applicant is entitled to the presumption of innocence until proven guilty, this principle does not automatically translate into an absolute right to bail. At the stage of bail, the Court is not required to record a finding of guilt but has to consider whether there exists prima facie evidence against the accused and whether the grant of bail would be detrimental to the interests of justice. In the present case, considering the medical evidence, the consistent statements of the victim and her mother, and the serious nature of allegations, there exists sufficient prima facie material to indicate the involvement of the applicant in the alleged offences.

22. After considering all the above factors in totality, this Court is of the considered opinion that this is not a fit case for granting regular bail to the applicant. The serious nature of the offences,

the tender age of the victim, the breach of trust by the applicant, the medical evidence supporting the prosecution case, the criminal antecedents of the applicant, and the reasonable apprehension of tampering with evidence and influencing witnesses are compelling reasons for refusing bail at this stage.

23. The protection of the victim child, the fair conduct of trial, and the larger interests of justice require that the applicant continues to remain in judicial custody. The grant of bail in the present circumstances would not only send a wrong message to society but would also jeopardize the safety and security of the victim and the fairness of the trial process.

24. Accordingly, for the detailed reasons stated above, the present bail application stands rejected.

(AMIT BORKAR, J.)