

Shabnoor

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

BAIL APPLICATION NO. 2469 OF 2025

Vishnu Ekram Paswan

... Applicant

V/s.

State of Maharashtra & Anr.

... Respondents

Mr. Amol G. Khillare, for the applicant.

Ms. Kranti T. Hiwrale, APP for the State – respondent No.1.

Ms. Priya Patil, for respondent No.2 (Appointed as legal aid counsel).

Mr. Pathade, API, Taloja Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 30, 2025

P.C.:

1. The applicant has filed this bail application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, requesting his release in Crime Register No. 206 of 2020 registered at Taloja Police Station. He is accused of offences under Sections 363 and 376(A) of the Indian Penal Code, 1860, and Sections 4, 8 and 12 of the Protection of Children From Sexual Offences Act, 2012 ('POCSO Act').

2. According to the prosecution, the informant is the victim's father. The victim was 10 years old when the incident occurred on 12th October 2020. At approximately 8:30 AM that day, the victim

went to a shop to buy biscuits but did not return home. The informant and his wife searched for her but were unable to locate her. The prosecution alleges that an unknown person kidnapped the victim by luring her. Based on this, the informant filed a complaint on 12th December 2020 at Taloja Police Station.

3. The applicant's counsel referred to the victim's statements recorded under Sections 161 and 164 of the CrPC (now Sections 181 and 183 of the BNSS). He submitted that the allegations are limited to inappropriate touching, which would fall under Sections 8 and 12 of the POCSO Act. He also pointed to the ossification test report, which shows the applicant was between 18 and 19 years old at the time of the alleged incident, raising the possibility that he may have been a juvenile. The applicant was arrested on 15th October 2020. Charges have been framed, but witness examination remains incomplete. Given that the prosecution has listed 19 witnesses, the trial is unlikely to conclude soon. Therefore, the defence requested that the applicant be released on bail.

4. On the other hand, the learned APP and the counsel for the victim opposed the bail application. They argued that the allegations are grave, as the victim was below 10 years of age at the time of the incident. They relied on the medical report, which indicates that penetration and sexual intercourse occurred on 12th October 2020. Therefore, they contended that Sections 4 and 6 of the POCSO Act apply. On this basis, they requested that the bail application be rejected.

5. I have carefully considered the submissions made by the learned counsel for the applicant, the learned APP, and the counsel for the victim. I have also examined the material on record, including the victim's statements, the medical report, and the ossification test report.

6. The primary issue for determination is whether the applicant is entitled to bail considering the nature of allegations, the stage of trial, and the period of incarceration already undergone by him.

7. It is noted that the applicant has been in custody since 15th October 2020, which amounts to nearly five years of incarceration. Charges have been framed against him, but the trial has not progressed significantly. The prosecution has listed 19 witnesses for examination, and given the current pace of proceedings, it is unlikely that the trial will conclude in the near future.

8. While the allegations under the POCSO Act are undoubtedly serious, the fundamental right to liberty cannot be overlooked. The Supreme Court has repeatedly held that bail is the rule and jail is the exception. Prolonged incarceration without trial amounts to denial of justice and violates the constitutional guarantee under Article 21 of the Constitution of India.

9. The ossification test report indicates that the applicant was between 18 and 19 years of age at the time of the alleged incident. This raises a genuine question regarding whether he was a juvenile at the relevant time. If the applicant is ultimately determined to be a juvenile, his continued detention as an adult would be improper and prejudicial to his rights.

10. There is an apparent inconsistency between the victim's statements recorded under Sections 161 and 164 of the CrPC (now Sections 181 and 183 of the BNSS) and the medical report. While the victim's statements suggest inappropriate touching, the medical report indicates penetration. This discrepancy is a matter that requires thorough examination during trial and cannot be conclusively determined at this stage.

11. The applicant has already spent a substantial period in custody. There is no allegation that he has a criminal history or that he would tamper with evidence or influence witnesses if released on bail. The investigation has been completed, and all evidence has been collected. The risk of the applicant absconding can be adequately addressed by imposing appropriate conditions.

12. Taking into account the prolonged incarceration, the uncertainty regarding the applicant's age, the delayed trial proceedings, and the absence of any likelihood that the applicant would misuse his liberty, I am of the considered view that the applicant has made out a case for grant of bail.

13. Hence, the following order:

(i) The Bail Application is allowed.

(ii) The applicant shall be released on bail in connection with Crime Register No. 206 of 2020 registered with Taloja Police Station for offences punishable under Sections 363, 376(A) of IPC and Section 4, 8 and 12 of POCSO Act, upon furnishing 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.

(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 report to the Taloja 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 State of Maharashtra without prior written permission of the Trial Court.

(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.

14. The Bail Application stands disposed of in above terms.

(AMIT BORKAR, J.)