

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2245 OF 2024
WITH
INTERIM APPLICATION NO. 1657 OF 2025
IN
CRIMINAL BAIL APPLICATION NO. 2245 OF 2024

Reshma Farid Shaikh
Versus
The State of Maharashtra and Anr.

Applicant
.. (Accused No.3)
.. Respondents

WITH
CRIMINAL BAIL APPLICATION NO. 1465 OF 2025

Aruna Santok Singh
Versus
The State of Maharashtra and Ors.

Applicant
.. (Accused No.2)
.. Respondents

WITH
CRIMINAL BAIL APPLICATION NO. 1486 OF 2025

Rizwan Nasir Sayyed
Versus
The State of Maharashtra and Ors.

Applicant
.. (Accused No.1)
.. Respondents

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- Mr. Rachit Singh a/w Mr. Nitin Satpute and Mr. Sofiya Ansari, Advocates for Applicant in Bail Application No.2245 of 2024.
- Mr. Ankit Takle a/w. Tarseen Sing, Advocates for Applicant in Bail Application No.1465 of 2025.
- Mr. Aniket Nikam a/w Mr. Sumit Patil, Advocates for Applicant in Bail Application No.1486 of 2025.
- Ms. Megha S. Bajoria, APP for Respondent No.1 – State in Bail Application No.1465 of 2025 and 2245 of 2024.
- Mr. R.M. Pethe, APP for Respondent No.1 – State in Bail Application No.1486 of 2025.
- Ms. Priyanka B. Chavan, Appointed Advocate through the Legal Aid for Respondent No.2.
- Ms. Chetna P. for Intervenor – Respondent No.3.

- Mr. Sawant, PSI – Goregaon Police Station present.

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CORAM : MILIND N. JADHAV, J.
DATE : MAY 08, 2025.

P.C.:

1. This is a group of three Applications under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R. No.685 of 2023 registered with Goregaon Police Station for offence under Section 370A, 370(3), 372, 376 r/w Section 34 of the Indian Penal Code, 1860 (for short ‘**IPC**’) read with Sections 4, 8, 12 of the Protection of Children from Sexual Offences Act, 2012 (for short “**POCSO Act**”) and 3, 4, 5, 7(1) of Immoral Trafficking (Prevention) Act, 1956.

2. Bail Application 1486 of 2025 is filed by Accused No.1 – Rizwan Sayyed. Bail Application No. 1465 of 2025 is filed by Accused No.2 – Aruna Santok Singh. Bail Application No.2245 of 2025 is filed by Accused No.3 – Reshma Farid Shaikh. Parties shall hereinafter be referred to by the nomenclature ascribed to them in the chargesheet.

3. Accused No. 2 is a 65 year old woman accused of running a prostitution racket at her licensed flat premises located in Goregaon, Mumbai. Accused No.1 and 3 are alleged to be bringing in clients for the said racket by sharing photos of victims to prospective clients. Accused No.4 is the mother of minor victim who remains to be absconding. Father of minor victim with similar role as that of her

mother is not named as Accused. There is a major victim who was 21 weeks pregnant who was found during the raid at the flat premises when she was visiting Accused No.2 for want of work.

4. Case of prosecution against Accused No.2 is based on two witness statements of the two victims arraigned as Respondent No.2 and Respondent No.3 in the Application whereas case of prosecution against Accused Nos.1 and 3 is based on alleged WhatsApp chats and photograph / messages exchanged between all co-accused. One of the victim is aged 17 years and the other victim is a 32 year old married woman who was 21 weeks pregnant. Cause of minor victim – Respondent No.2 is espoused by Ms. Chavan, Learned appointed advocate through Legal Aid. Cause of Major victim – Respondent No.3 is espoused by Advocate privately engaged by her.

5. Upon receipt of a tip-off that Accused No.2 was running a racket from the said flat, on 04.11.2023, prosecution officers conducted a trap – raid in her house premises i.e. Room No.242 Building No.16B, Best Colony, Siddharth Nagar, Goregaon (West), Mumbai, Maharashtra by sending a decoy customer. During the raid they apprehended Accused No.2 alongwith the two victims (Respondent No.2 and Respondent No.3) from the said flat. FIR was filed by officer of prosecution on the same day i.e. 04.11.2023.

6. Prosecution has informed Court that minor prosecutrix is untraceable, Ms. Chavan has been appointed on her behalf to represent and espouse her cause and I have heard her. The major prosecutrix has appointed an advocate who has also been heard. I have heard the submissions made by the Learned Advocates for the Applicants and the APP and with their able assistance, perused the record of the case.

7. Case of prosecution against Accused No.2 is primarily relying upon statement of Respondent No.2, minor prosecutrix wherein she has stated that she came to Mumbai on 01.09.2023 along with her parents from Delhi after calling Accused No.2 on the phone and she being informed about availability of work in Mumbai. She has stated that she arrived by train from Delhi, got down at Dadar with her parents, took a suburban local train to Goregaon and came to the subject premises belonging to Accused No.2 on 01.09.2023. Thereafter she has stated that she was having a headache on 02.09.2023 and 03.09.2023 when she took rest and on the afternoon of 04.09.2023, the raid was conducted by prosecution officers as delineated herein above. She has stated that at that time, her parents had gone to visit their relative in Chembur and were not present in the house. Save and except the aforestated, she has not stated anything else.

7.1. In the statement of the major prosecutrix, she has stated therein that she arrived in Mumbai from Howrah one month ago

alongwith her one year old child to search for her husband who had stopped sending monies to her. She has stated that she met her relatives who took her to her maternal aunt's place where she stayed for some days after which she found it difficult to maintain herself and therefore some acquaintance gave her the phone number of Accused No.2 informing her that if she spoke to her she will arrange for some work. She spoke to Accused No.2 and she called the major victim to visit her house on 04.09.2023 when she visited and was caught in the raid.

7.2. FIR is lodged by Police officer on 04.09.2023 narrating the incident and alleging that Accused No.2 with the help of Accused Nos.1 and 3 was forcing two victims into prostitution from the subject premises.

8. I have heard the rival submissions of the learned Advocates at the bar and with the able assistance peruse the record of the case.

9. Merely on the basis of witness statements, learned prosecutor has vehemently argued that role of Accused No.2 is *prima facie* established but in my opinion to what extent the said role has been established and whether the Applicant can be *prima facie* seen to have participated in any act for which invocation of the alleged crime is made cannot be proved without trial. What is intriguing the Court is whether the statement of minor victim is to be believed or otherwise. It

is time and again reiterated by Courts that to maintain and prove allegations under POCSO, the foundational facts of the prosecution case have to be placed before Court and *prima facie* proven for the Court to form an opinion at the interim stage. This principle is reiterated in the decision of *Joy vs. State of Kerala*¹.

10. It is *prima facie* seen that in criminal jurisprudence, even to believe the prosecution case *prima facie*, the same needs to be shown to be existing beyond reasonable doubt on the basis of *prima facie* material on record. Statement of the minor victim is the sole material for indicting Accused No.2 whereas statement of the major victim does not reflect anything incriminating for invocation of the alleged charge against Accused No.2. Even insofar as minor victim is concerned, though this court is oblivious of the fact that there is presumption attached to the alleged statement in view of the provisions of Section 29 of the POCSO Act, the said statement cannot be accepted as gospel truth unless the principle of reverse burden of proof is *prima facie* established by prosecution on the basis of record of the case. This I am afraid has not been done, neither the court can come to a definite conclusion to that extent on the basis of material on record. The foundational facts will have to be placed on record by the prosecutrix to allege invocation of charges against Accused No.2.

¹ 2019 SCC OnLine 783

11. It is seen that the medico legal examination of minor prosecutrix is inconclusive. Accused No.2 is a 65 year old woman suffering from various medical ailments. Charge and case of prosecution alleged against Accused No.2 can be proved at trial. Accused No.2 is incarcerated for the past more than 1 year 6 months pending trial. Investigation is complete. Charge sheet is filed. Though minor prosecutrix's mother is also arraigned as co-accused, she is absconding, so also the minor prosecutrix. Considering the statement of both the prosecutrix and alleged role of Accused No.2, I am of the opinion that further custody of Accused No.2 is not warranted as there is no use of force alleged in any of the material relied upon by the prosecution.

12. This is because the Court has noticed large scale absurdity, infirmity and discrepancy in the statement of the minor victim recorded on 04.11.2023 when her medico legal examination conducted on 06.11.2023 and detailed narration by her about her history as well. The incidents when perused in the medico legal examination reports appended at page Nos.121 onwards however show a completely different picture. The minor prosecutrix has herself stated that she compromised herself on 02.11.2023 without use of any force on her own volition, thereafter she again underwent a similar course of events on the next day in the morning and evening without any force. This *prima facie* shows that statement of minor prosecutrix

appended alongwith the FIR is not believable on the face of record. She has also stated that she has a boyfriend with whom she has a consensual physical relationship. As alluded to herein above, witness statement of second prosecutrix *prima facie* does not inspire any confidence to invoke the charges against all 3 Accused at this stage as it does not throw light on their role. Needless to state that prosecution can prove its case about the complicity of all Accused persons at trial.

13. The case of prosecution against Accused No.1 and Accused No.3 is merely based on witness statements which state that Applicants brought customers actively seeking minors. Mobile phone numbers of both Applicants were found in the Mobile device of Accused No.2 – Aruna saved under their code names and this is the alleged incriminating material. That apart photograph of girls was also found in the WhatsApp chats of all three accused persons.

14. *Prima facie* it is seen that Accused No.1 and Accused No.3 were not arrested from the incident spot. Their indictment is solely on the basis of mobile phone data and WhatsApp photographs. On their arrest, certain cash amount and mobile phone numbers were found from their personal custody.

15. Insofar as absconding Accused No.4 is concerned, she is the mother of minor victim and she remains to be arrested till date. Entire case of prosecution is hinged upon exchange of photographs of the

victim girls amongst accused persons. This is the only *prima facie* material placed on record by prosecution. On behalf of victim it is vehemently argued that acts of Accused No.1 and Accused No.3 are detrimental to the Society at large and if they are released on bail, they are likely to re-offend themselves. It is also argued that subject flat premises belonged to some third party and it was taken on leave and license by Accused No.2 who was residing over there since long. Role attributed to Accused No.1 and Accused No.3 by prosecution is that Accused No.1 received payment from the decoy customer and Accused No.3 was present with him. Save and except this there is no other incriminating material placed on record by the prosecution.

16. Applicants have been in custody for a period of about 1.5 years pending trial. Case of prosecution against Accused No.2 is based on statement by the victim who has adopted a different stance on two separate occasions whereas case of prosecution against Accused No.1 and Accused No.3 is based on electronic record which can only be substantially proved at trial. Accused No.4 – Mother of Applicant, who, as per the prosecution brought the minor victim to the residence of Accused No.2 is absconding.

17. This Court is in receipt of a report from the prosecution that the minor victim – Respondent No.2 is untraceable. Her mother who is Accused No.4 is also absconding. What is intriguing is that Father of

the minor victim who shares a similar role to that of Accused No.4 is not even named as accused in the FIR or charge-sheet. Be that as it may, in such circumstances where the victim remains to be untraceable and her mother remains to be absconding for more than 1.5 years, it is likely that trial cannot be commenced and for that matter completed in near foreseeable future. Hence, in view of my aforesaid observations and role attributed by prosecution to all 3 Accused persons as emanating from the record, all 3 Applications are allowed subject to the following terms and conditions:-

- (i) All 3 Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount;
- (ii) All 3 Applicants are permitted to furnish provisional cash bail of Rs.25,000/- each for their release immediately and file undertaking that they will provide one or two sureties in the like amount of Rs.25,000/- each within a period of four weeks after their release which shall be accepted by the Trial Court. Applicants shall provide sureties as directed;
- (iii) Before their actual release from jail, Applicants shall furnish their addresses where they propose to reside after their release from jail to the concerned Police

Station and also to the trial Court;

- (iv) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;
- (v) Accused No.1 shall attend the Trial Court on first Monday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence until completion of trial; If the first Monday of the said month falls on a holiday and/or non Court working day, Accused No.1 shall mark presence on the next working day;
- (vi) Accused No.2 shall attend the Trial Court on first Wednesday of every month between 11.00 a.m. and 1.00 p.m. to mark her presence until completion of trial; If the first Wednesday of the said month falls on a holiday and/or non Court working day, Accused No.2 shall mark presence on the next working day;
- (vii) Accused No.3 shall attend the Trial Court on first Friday of every month between 11.00 a.m. and 1.00 p.m. to mark her presence until completion of trial; If the first Friday of the said month falls on a holiday and/or non Court working day, Accused No.3 shall mark presence on the next working day;

- (viii) Applicants shall co-operate with the conduct of trial and attend the Trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if they do so, it will entitle the prosecution to apply for cancellation of this order;
- (ix) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (x) Applicants shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (xi) In case of any infraction of the above conditions and / or two consecutive defaults in marking their attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

18. It is clarified that the observations made in this order are limited for the purpose of granting bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

19. Fees of the learned Advocate Ms. Chavan, learned Advocate appointed through Legal Aid to represent and espouse the cause of

Respondent No.2 shall be released by the Registry of this Court within a period of one week from the date of presentation of a server copy of this order on compliance.

20. All Bail Applications are allowed and disposed.

21. Pending Interim Application No.1657 of 2025 is accordingly disposed.

[MILIND N. JADHAV, J.]

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