



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.360/2025

(Mahendra @ Vijaybharti S/o Vasantrao Gajbhhiye Vs. The State of Maharashtra, through P.S.O.P.S. Jaripatka, Nagpur and others)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. A.S. Shukla, Advocate (appointed) for the applicant.
 Mr. Anant Ghogare, A.P.P for the non-applicant No.1/State.
 Mr. Viren Joshi, Advocate (appointed) for non-applicant Nos.2 and 3.

CORAM: MRS.VRUSHALI V. JOSHI, J.

DATED: 6.11.2025.

The applicant is arrested in Crime No.227/2023 for the offence punishable under Sections 376(2)(I), 376(AB), 354 and 506 of the Indian Penal Code and Sections 4 and 8 of the Protection of Children from Sexual Offences Act.

2. The applicant has filed this application through legal aid on the ground that there is a delay in trial and has stated that on merits also the case is not made out against him for the offence punishable under Section 376 of the I.P.C.

3. The prosecution case is that the applicant had committed offence when two minor girls were playing on terrace. He touched them inappropriately, inserted his hand in their knickers and touched their private parts. It was seen by the relative of one of the victims and thereafter they disclosed that the applicant had touched the victims inappropriately and F.I.R. was lodged and crime is registered.

4. Learned Advocate for the applicant has stated that since 2 years and 7 months the applicant is in jail. The offence under Section 376 of the I.P.C. will not be attracted as there is no allegation of penetration. If the offence under Section 354 of the I.P.C. is proved,

then punishment is of 5 years and he has already undergone half of the punishment. As per Section 479 of the Bhartiya Nagarik Suraksha Sanhita if a person has undergone half of the punishment, then he shall be released on bail. As per progress report 5 witnesses are examined and 3 to 4 witnesses have remained to be examined.

5. The applicant has relied on the judgment of the Hon'ble Apex Court in Special Leave Petition No.10377/2025 (Laxman Jangde V/s. State of Chhattisgarh through the Station House Officer), dated 10.9.2025 wherein following observations are made:-

“6. Having considered the matter in depth, we find substance in the submission of learned senior counsel for the appellant. A plain reading of the evidence and other materials on record reveal that the offence made out from such allegation do not satisfy the ingredients of either Section 375 of the IPC or Section 3(c) of the POCSO Act. Thus, to that extent, the conviction cannot be sustained.”

He has also relied on the observations made by the Hon'ble Apex Court in para 15 in case of *Union of India V/s. K.A. Najeeb* reported in **(2021) 3 SCC 713** which reads as under:-

“15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the

courts would ordinarily be obligated to enlarge them on bail.”

The learned Advocate for the applicant has prayed to release the applicant on bail.

6. The learned A.P.P. opposed the application stating that offence under POCSO Act is registered against this applicant, applicant is staying in same area, though the allegations of penetration are not there the offence is serious and trial has already commenced and 3 to 4 witnesses have remained to be examined. The learned A.P.P. has stated that minor girls have given similar statement, they are examined, the applicant is staying in same area. As the trial is at the fag end prayed to reject the application.

7. Heard both sides and perused the record.

8. It appears from the record that though trial is initiated only 5 witnesses are examined till today. The applicant is in jail since last 2 years and 7 months. From the allegations, it appears that the offence under Section 376 of the I.P.C. will not be attracted as there is no allegations of penetration. The applicant has touched the private parts of the minor girls and, therefore, prima facie, at the most, offence under Section 354 of the I.P.C. will be attracted. The applicant has undergone half of the punishment and, therefore, Section 479 of the B.N.S.S. will be attracted. As per Section 479 of the B.N.S.S. the applicant is entitled for bail. Hence, the application is allowed.

i) Applicant - Mahendra @ Vijaybharti S/o Vasantrao Gajhbhiye be released on bail in Crime No.227/2023 for the offence punishable under Sections 376(2)(I), 376(AB), 354 and 506 of the Indian Penal Code and Sections 4 and 8 of the Protection of Children from Sexual

Offences Act, on his furnishing PR. Bond in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) with one solvent surety in the like amount.

- ii) The applicant shall not in any way tamper with the prosecution evidence.
- iii) The applicant shall not pressurize or threaten the prosecution witnesses.
- iv) The applicant shall co-operate with the learned trial Judge in the conduct of the trial.
- v) The applicant is directed not to enter Kushinagar area of Nagpur.
- vi) The trial Court is directed to conclude the trial within a period of six months.

9. The fees of the learned Advocates appointed through legal aid for the applicant and non-applicant No.2 be paid as per Rules.

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10. In view of above order, this application does not survive and is disposed of accordingly.

(MRS.VRUSHALI V.JOSHI, J.)