IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

939 BAIL APPLICATION NO. 1460 OF 2026

Viraj Jahgya Pavara
VERSUS
The State of Maharashtra and Another

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Mr. Savale Amit S, Advocate for the Applicant
Mr. D. J. Patil, APP for Respondent No.1 – State
Mr. A. V. Wadwale, Advocate for Respondent No.2

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CORAM : HITEN S. VENEGAVKAR, J.
DATE : 13.10.2026

PER COURT :

1. Heard the learned Advocate for the Applicant, the learned APP appearing for Respondent No. 1–State, and the learned Advocate appearing for the Informant. The investigation is complete, and the charge-sheet has been filed. With the assistance of the learned Advocates, I have perused the entire charge-sheet.

2. The present Application seeks regular bail for the Applicant, who was arrested on 24.04.2026 in connection with Crime No.196/2026 registered at Taloda Police Station, District Nandurbar, for the offences punishable under Sections 64(1) and 137(2) of the Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as “the BNS”), and Sections 4(1), 6 and 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act”).

3. The case of the Prosecution is that, the father of the victim lodged a complaint at the concerned Police Station on 13.04.2026 stating therein that, on 11.04.2026 at about 06:00 p.m, when the Informant and his wife had gone to attend some ritual program in the village and returned home in the night of 12.04.2026, they found that, the victim, who is their minor daughter, was missing from the house. Thinking that the victim had gone to her uncle's place for sleeping, they did not raise any alarm. However, on the next day, in the morning, at 06:00 a.m., the wife of the Informant visited the house of her brother-in-law, namely, Lulya and inquired about the victim – daughter. She was informed that the victim had not come to her uncle's residence. As the victim could not be traced despite search efforts, a complaint came to be lodged against unknown persons for kidnapping the minor girl. The Prosecution submits that during the course of investigation, the whereabouts of the present Applicant and the victim - girl was ascertained, pursuant to which, the victim - girl was rescued. She was found in company of the present Applicant. As the victim girl is a minor and the present Applicant, aged about 25 years, was a married man, he came to be arrested for the offences referred to herein-above.

4. The learned Advocate for the Applicants submits that, the applicant has been falsely implicated in the alleged offence. Initially, the complaint was lodged against unknown persons, and subsequently, the present Applicant has been arraigned as an accused. He argues that, the present Applicant and the victim were in a love relationship and that the physical relations allegedly established between them were, at the most, consensual in nature. He submits that the victim was aged about 15 years and 3 months

and was capable of understanding the consequences of her actions. The very fact that she accompanied the Applicant from one place to another of her own volition and also stayed with him in a lodge without raising any hue and cry or making any complaint clearly suggests that they were in a relationship and that the alleged acts were consensual. He submits that, the investigation is complete and the charge-sheet has already been filed and considering the period of custody already undergone by the Applicant, the Applicant be released on bail.

5. The learned Advocate appearing for the Informant as well as the learned APP appearing for the State vehemently oppose the present Application. They submit that, the offence alleged against the Applicant is a serious one involving the rape of a minor girl. They argued that, the Applicant, who is about 26 years of age, is already married and is the father of two children. According to the Prosecution, the Applicant induced the minor victim by making a false promise of marriage and, under that pretext, committed forcible sexual intercourse with her. Prima facie case is clearly made out against the Applicant, as the victim has specifically narrated the entire sequence of events and the manner in which the sexual acts were allegedly committed upon her in her statement recorded by the Police during the investigation. The learned APP further submits that, theory of consent put up by the Applicant at the stage of bail cannot be taken in consideration in the light of presumption under Section 29 of the POCSO Act. He further argues that the consensual theory has been put up by the Applicant itself shows that there is prima facie material available to suggest that, the presumption under Section 29 of the POCSO

Act can be drawn against the present Applicant. He submits that, in the light of the evidence collected by the Prosecution and fact that, the minor girl has been subjected to rape by a mature married man having two children, the Applicant does not deserve to be granted bail and the Application ought to be rejected.

6. I have heard the learned Advocate for the Applicant, the learned Advocate for the Informant as well as the learned APP appearing for the State. No doubt, the allegations against the present Applicant are serious in nature. The Applicant has been charged with offences under the POCSO Act, whereby he is alleged to have committed sexual assault upon a minor girl aged about 15 years. However, taking into consideration the Prosecution story itself, it appears that, the victim accompanied the Applicant from one place to another of her own accord and it does not refer to any force or coercion being exerted upon the victim. Though the statutory presumption under Section 29 of the POCSO Act may be attracted and the plea of consensual physical relations cannot, by itself, be accepted as a defence where the allegations pertain to an offence under the POCSO Act committed against a minor, yet, at this stage, when the investigation is complete and the charge-sheet has already been filed, the Prosecution has failed to make out a prima facie case warranting the continued detention of the Applicant in custody during the pendency of the trial. The apprehension of the Prosecution that the Applicant may tamper with the prosecution witnesses or obstruct the trial can be adequately taken care of by imposing suitable conditions. Taking into consideration the period of incarceration undergone by the Applicant since 24.04.2026 and the fact that the investigation is

complete and the charge-sheet has been filed, I am inclined to allow the Application. Hence, the following order:

ORDER

[I] The Bail Application is allowed.

[II] The Applicant, in connection with Crime No.196/2026 registered at Taloda Police Station, District Nandurbar, for the offences punishable under Sections 64(1) and 137(2) of the Bharatiya Nyaya Sanhita, 2023, and Sections 4(1), 6 and 8 of the Protection of Children from Sexual Offences Act, 2012, be released on bail on furnishing personal bond of Rs.50,000/- [Rupees Fifty Thousand Only] with one or two sureties in the like amount, subject to the following conditions :

[a] The Applicant shall not enter the limits of Taluka Taloda till the conclusion of the trial.

[b] The Applicant shall not, directly or indirectly, contact, approach, or attempt to communicate with the victim, any of her family members, or any of the prosecution witnesses.

[c] Breach of any of the above conditions shall entitle the prosecution to apply for cancellation of bail.

7. Application stands disposed of accordingly.

[HITEN S. VENEGAVKAR, J.]

Sameer/Oct-2026