IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1607 OF 2026

Tukaram Lobha Chavan ... **Applicant**
Age 71 years, Occu: Labour
R/o Ritha Tanda Tq. Kinwat Dist. Nanded

VERSUS

1. The State of Maharashtra
Through Police Station, Kinwat Dist. Nanded

2. X Y Z ... **Respondents**

Mr. Suraj R. Bagal, Advocate for the applicant
Mr. V. K. Kotecha, APP for the State
Mr. Azizoddin R. Syed, Advocate for respondent no.2

CORAM : HITEN S. VENEGAVKAR, J.
Dated : 27th August, 2026

O R D E R :-

1. The applicant seeks regular bail in connection with Crime No.37 of 2026 registered with Islapur Police Station, Taluka Kinwat, District Nanded, for the offences punishable under Section 127(2) of the Bharatiya Nyaya Sanhita, 2023 and Section 4 of the Protection of Children from Sexual Offences Act, 2012. He was arrested on 5 May 2026. Investigation is completed and the charge-sheet has been filed. His application for bail was rejected by the Special Court at Nanded on

16 July 2026. The present application falls for consideration under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

2. The prosecution states that the victim is a boy aged about fourteen years whose mother describes him as having intellectual difficulties following a childhood head injury. On the evening of 30 April 2026, the mother and her elder son had gone to another village to attend a marriage, while the father was away at work. The child was left in the care of a female relative. During the night, the child went out to answer nature's call. The allegation is that the applicant took him near a well, restrained his limbs, gagged him with a piece of clothing and subjected him to penetrative sexual assault. When the child did not return, the relative sent her son to search for him. According to the prosecution, this witness found the child with the applicant, intervened and brought the child home. The mother was informed the following morning. After returning, she enquired with the child and thereafter approached the police. The child was medically examined on 1 May 2026.

3. Ld. Advocate for the applicant submits that the applicant has been falsely implicated. The mother was admittedly absent when the incident allegedly occurred and her report is based on information supplied by others. There is a delay of about one day in lodging the FIR. It is submitted that the accounts given by the mother and the other

witnesses contain discrepancies, including variations between their police statements and the statements recorded before the Magistrate. Particular reliance is placed on the mother's subsequent say dated 8 July 2026, in which she states that the complaint resulted from incorrect information and that, upon making enquiries, she found that the applicant had not committed the alleged act. She has expressed no objection to his release on bail.

4. Ld. Advocate further submits that the applicant is seventy-one years old and suffers from ailments associated with advancing age. According to him, the allegation that the applicant carried and overpowered a boy of about fourteen or fifteen years is improbable, and no medical certificate establishing his capacity to perform the alleged sexual act has been produced. The medical examination discloses only a minor tear, with its age mentioned as one to two days, although the examination was conducted on the following day. The alleged video recording has not been recovered. The applicability of the POCSO Act is also questioned on the ground that the victim was major or had attained sufficient understanding. Lastly, it is submitted that the applicant has no criminal antecedents, has a permanent residence and is willing to abide by stringent conditions. As the investigation is over and nothing remains to be recovered from him, further detention would serve no useful purpose.

5. Ld. APP opposes the application on the basis of the child's account, the statements of the witnesses, the medical findings and the material collected during investigation. The prosecution maintains that the applicant restrained and sexually assaulted a vulnerable child and that the material is sufficient to establish his prima facie involvement. It also relies on the seizure of the article allegedly used for restraint and the witness's mobile phone. The applicant, the child and the material witnesses reside in the same locality, and the prosecution apprehends interference with the witnesses if the applicant is released. The mother's subsequent stand, according to the prosecution, does not displace the other material in the charge-sheet.

6. I have considered the grounds urged for release and examined the papers accompanying the application, including the charge-sheet and the order of the Special Court. At this stage, the Court must assess whether the accusation has reasonable support in the material and whether release can be permitted consistently with a fair trial. The nature of the accusation, its supporting material, the applicant's individual circumstances, the period of custody and the apprehension of interference with witnesses must be considered together. The principles explained in **Mahipal v. Rajesh Kumar alias Polia, (2020) 2 SCC 118,** require such an assessment without undertaking an elaborate adjudication of the evidence. The accusation under the POCSO Act

does not dispense with this exercise or, by itself, require refusal of bail.

7. The submission that the case rests only on the mother's hearsay report does not reflect the complete material. The child's statement recorded before the Magistrate under Section 183 of the BNSS is part of the charge-sheet. He describes the applicant taking him towards a well, restraining his hands and legs, gagging him and inserting his penis into his anus. He also describes the intervention of the witness who freed him and brought him home. These allegations directly attribute the act to the applicant. The statement is not being treated as substantive evidence establishing guilt; nevertheless, it is material which cannot be excluded while assessing whether there is a prima facie case for the limited purpose of bail.

8. The statement of the witness who went in search of the child provides further support to the accusation. In his statement before the Magistrate, he describes finding the child near the well with his legs tied and his mouth gagged, and the applicant behind him committing the alleged act. He states that he intervened, caught the applicant and struck him, after which the applicant went away. The female relative's account before the Magistrate is materially based on what this witness reported to her. It would, therefore, be inappropriate to treat her also as an eyewitness to the sexual act. Equally, the corrections concerning the names of the mother's sons and her clarification that the applicant

was caught by the male witness alone require consideration at trial. They do not, on a tentative reading, remove the child's own account or the account of the witness claiming to have intervened.

9. The medical papers also require consideration in their entirety. The examination records a minor perineal tear and a tear measuring approximately 0.5 to 1 centimetre at the upper anal rim. The provisional opinion refers to findings suggestive of forceful application. These findings do not independently establish the identity of the assailant or conclusively prove the alleged assault. They nevertheless provide prima facie support to the account of force directed at the anal region. The absence of injury to the urethra or other parts of the body does not, in itself, contradict that account. Nor can the description of the tear as minor be treated as establishing that penetrative assault did not occur.

10. Ld. Advocate places emphasis on the estimated age of the injury being one to two days. The incident is alleged to have occurred during the night of 30 April 2026 and the examination was conducted on the following evening. The estimate requires explanation by the examining doctor, but it cannot presently be read as fixing a precise time of injury which necessarily excludes the alleged incident. The final medical opinion was kept pending for the forensic results. I have, therefore, treated the findings only as provisional support and have not

assumed any positive forensic result. For the alleged act of penile penetration into the anus, Section 3(a) of the POCSO Act requires penetration to any extent. The prosecution must establish that ingredient; the material cannot be assessed on a proposition that penetration is altogether unnecessary. Here, the child's statement expressly alleges penetration and the medical findings do not prima facie exclude it.

11. The mother's subsequent say has also been considered. She states that she acted on information supplied by a villager and that enquiries made with her children, relatives and others about ten days later disclosed that the applicant had not committed the alleged act. Her change of stand is relevant and cannot be ignored. At the same time, she was not present during the incident. Her later statement of enquiries does not amount to a retraction by the child of his own statement before the Magistrate, nor does it replace the statement of the witness who claims to have intervened. The competing versions must be tested in evidence. The mother's no objection cannot, in these circumstances, be treated as sufficient to efface the remaining prosecution material. Merely because she has filed such a say, I do not draw a finding that the applicant has procured it or has already tampered with witnesses.

12. As regards delay, the allegation concerns an occurrence during

the night, when the mother was away. The witness states that he informed her on the following morning, after which she returned and enquired with the child. The child was taken for medical examination that evening, and the police received the information at about 10.52 p.m. on 1 May 2026. The interval has to be examined against that sequence. It is not an unexplained silence of such duration that the accusation must presently be discarded. Whether the witnesses' conduct and their explanation withstand scrutiny remains open for trial.

13. The contention that the POCSO Act is inapplicable because the victim was major is not supported by the material presently produced. The charge-sheet contains an extract of the school register and a school certificate recording a date of birth in May 2011, which would place him below sixteen years on the date of the alleged incident. The statements describing him as fourteen or fifteen years old are consistent with minority. There is an apparent difference between the mother's description that he had not received schooling and the school documents collected during investigation. That aspect may be tested when the documents are proved, but does not presently establish majority. In **State of Uttar Pradesh v. Anurudh and another, 2026 SCC Online SC 40,** the Supreme Court has explained that a bail court may form a prima facie view of age from the documents, while their correctness and the final determination fall for consideration at trial.

On that limited assessment, the plea of majority cannot be accepted. Attainment of understanding, by itself, does not exclude a person below eighteen years from the protection of the Act.

14. The applicant's age of seventy-one years deserves due weight. However, age alone does not establish physical incapacity to commit the act described by the child and the witness. The medical examination of the applicant on 5 May 2026 records his general condition as fair and no complaint at that time. The papers do not contain an opinion establishing incapacity to perform the alleged act or a present serious illness requiring release for treatment. The absence of an affirmative certificate of sexual capacity does not, by itself, displace the direct allegations. This conclusion does not place a burden on the applicant to prove his innocence; it only means that the plea of physical impossibility is not established by the material relied upon for bail. Appropriate treatment must, of course, remain available to him in custody.

15. I have also considered the absence of criminal antecedents, the applicant's permanent residence and his undertaking to comply with conditions. These circumstances weigh in his favour. The investigation having been completed, his custody is no longer required for interrogation. Even so, the question of bail also involves the protection of the evidence to be recorded at trial. The child and the

applicant are neighbours, the material witnesses belong to the same locality, and the statements describe the child as having intellectual difficulties and requiring family care. Without treating that description as a formally established medical diagnosis, the circumstances disclose a particular vulnerability which must be taken into account. The applicant's ready access to the child and those witnesses gives the apprehension of interference a factual basis. Considered with the specific allegations and supporting material, an undertaking not to contact witnesses would not sufficiently address that concern at present. This assessment does not rest merely on the fact that the parties live in the same village or on the mother's subsequent say.

16. The applicant has been in custody since 5 May 2026. His liberty and advancing age require that the prosecution be brought to trial promptly. On the record presently available, however, the period of custody does not outweigh the direct material attributing the act to him, the medical findings and the need to protect the vulnerable child and the material witnesses. There is no material establishing prolonged stagnation of the trial which would presently justify a different conclusion on that ground. Having considered the circumstances cumulatively, I am not persuaded to exercise discretion in favour of release on bail. The observations above are confined to a prima facie assessment, and the applicant retains his right to contest every part of

the prosecution case.

17. Bail Application No.1607 of 2026 is rejected.

18. The Special Court shall give priority to recording the evidence of the child and the material witnesses, if not already recorded, and shall endeavour to conclude the trial expeditiously, keeping Section 35 of the POCSO Act in view. The necessary safeguards and assistance for recording the child's evidence shall be provided. The prison authorities shall ensure that the applicant receives medical examination and treatment as required. All observations in this order are prima facie and shall not influence the trial on merits.

(HITEN S. VENEGAVKAR, J.)

JPChavan