IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1897 OF 2026

Tushar Ashok Chaudhari ... Applicant

Versus

The State of Maharashtra and Another ... Respondents

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Mr. Prasanna N. Kutti, Advocate for Applicant.
Mr. K. K. Naik, APP for Respondent – State.
Mr. P. N. Kalani, Advocate for Respondent No.2.

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CORAM : HITEN S. VENEGAVKAR, J.
DATED : 29th OCTOBER, 2026

ORDER :

1. The applicant seeks regular bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, in connection with Crime No.136 of 2026 registered with Savda Police Station, District Jalgaon, for offences punishable under Sections 64(2)(f), 351(2) and 351(3) of the Bharatiya Nyaya Sanhita, 2023, and Sections 4, 5(n) and 6 of the Protection of Children from Sexual Offences Act, 2012. He was arrested on 30th May 2026. The charge-sheet was filed on 26th July, 2026, and the case is registered as Special Case (POCSO) No.71 of 2026. His earlier application was rejected on 10th July, 2026, and his application after submission of the charge-sheet was rejected by the Special Court at Bhusawal on 25th August, 2026.

2. The prosecution states that the child was residing with her maternal aunt and the applicant, who is her aunt's husband, after the death of her father and the remarriage of her mother, who was no longer in contact with her. According to the child, during November 2025, when other members of the family had gone out of station, the applicant entered her room at night, pressed her mouth, removed her clothes and forcibly subjected her to sexual intercourse. He threatened to kill her if she disclosed the incident. She alleges that he thereafter repeatedly assaulted her whenever other family members were away and continued to threaten her against disclosure.

3. The prosecution further states that on 28th May 2026, while the applicant's wife and children were away, he entered the child's room at about 11.00 p.m. and again subjected her to sexual intercourse against her will. The child disclosed the occurrence to a person in whom she reposed confidence on the following morning. She alleges that, after she returned home, the applicant again assaulted her at about 1.00 p.m. on 29th May 2026 and threatened her. Following further disclosure and encouragement to approach the police, she lodged the report on 30th May 2026. Her statement was subsequently recorded before the Magistrate under Section 183 of the BNSS.

4. Learned Advocate for the applicant submits that the applicant is innocent and that the allegations are an afterthought. Although the alleged incidents extend over several months, the child did not approach the police despite having opportunities to speak to relatives and acquaintances. It is submitted that the applicant lives in a joint family of about ten persons and that one or more members would always be present in the house. The occurrence in the manner alleged is, therefore, disputed. Learned Advocate further submits that the investigation is complete, the relevant articles have been seized, the medical examinations have been conducted and the statements of witnesses have been recorded. No further custodial interrogation or recovery is necessary, while the documentary and scientific material is already in official custody.

5. Learned Advocate for the applicant also relies upon the child's say dated 5th August 2026 expressing no objection to his release. It is submitted that the applicant is an agriculturist, has a permanent residence and immovable property, has no criminal antecedents and attended the police station when called. He has remained in custody since his arrest, and the trial would take time. He is willing to furnish sureties, attend the police station, remain outside the specified locality and comply with any other conditions

imposed by this Court.

6. The prosecution opposes release on the ground that the child has specifically attributed repeated sexual assaults and threats to the applicant. Its opposition, as recorded by the Special Court, is that the applicant occupied a position of dominance over a child dependent upon his household and that his release would expose her to pressure and affect the trial. The prosecution accordingly maintains that completion of investigation does not remove the concern regarding influence over the child and the other witnesses.

7. The question at this stage is whether the material discloses reasonable grounds for the accusation and whether release would be consistent with a fair trial. The POCSO Act does not impose an absolute prohibition against bail. Equally, completion of investigation does not dispense with consideration of the material collected or the likelihood of interference with witnesses. In ***X v. State of Uttar Pradesh and Another***, 2026 (1) Crimes 248 (SC) : 2026 INSC 44, decided on 9th January, 2026, the Supreme Court emphasised the need to consider the prima facie material, the child's vulnerability and the likelihood of intimidation while deciding bail in a case of sexual assault upon a child. That decision concerned different facts, including allegations

of gang rape and recording of the assault. The principle relevant here is the need for an assessment of the particular evidence and the risk to a fair trial, rather than a decision resting merely on the filing of the charge-sheet.

8. On examining the present record, the accusation against the applicant is direct and specific. In her report and her statement before the Magistrate, the child describes the applicant entering her room, using force, committing sexual intercourse and threatening her against disclosure. She also describes the circumstances in which other family members were away and identifies the two incidents immediately preceding the report. These statements provide a substantial prima facie basis for attributing the alleged acts to the applicant.

9. The material relating to age includes the municipal birth certificate collected during investigation, recording the date of birth as 1st March, 2009, read with the requisition and the particulars of parentage. It *prima facie* supports the prosecution's case that the child was below eighteen throughout the alleged period. In ***State of Uttar Pradesh v. Anurudh and Another***, 2026 SCC OnLine SC 40, decided on 9th January, 2026, the Supreme Court explained that a bail court may examine the age documents but should not undertake a trial of their correctness. The question

of their formal proof remains open. The alleged relationship by marriage and residence in the same household also provide a prima facie basis for invocation of Section 5(n) of the POCSO Act. The accusation thus concerns an alleged abuse of the very domestic relationship in which the child was being maintained.

10. The submission concerning delay must be considered in that circumstances. The child explains that she was frightened by the applicant's threats and initially lacked the courage to approach the police. The investigation also contains the statements of Nikhil Patil and the religious preacher to whom she allegedly disclosed the assaults before registration of the offence. They refer to a disclosure on 16th May, 2026 and advice to lodge a complaint. Nikhil Patil additionally refers to her telephone communication on the morning of 30th May, 2026 about the further assault. These witnesses do not claim to have witnessed the assaults, but their accounts are material to the contention that the allegation was first devised when the FIR was lodged. Moreover, the report followed the last alleged assault of 29th May, 2026 on the next day. In these circumstances, the interval from the first alleged incident does not, by itself, justify discarding the accusation at the bail stage.

11. Nor does the existence of a joint family establish that the applicant could not have had the opportunity alleged. The child

speaks of a separate room on an upper floor and of occasions when other members were away. The crime-scene report describes a three-storey house with rooms on the upper floor and an attached bathroom. Whether particular family members were present at the relevant times is a matter for evidence. The defence assertion that someone would always be at home cannot presently be accepted as conclusively excluding the opportunity described by the child.

12. The medical record contains the history of repeated sexual assault attributed to the applicant, including the incidents immediately preceding the complaint. The clinical findings and the scientific material require consideration within their proper limits. Absence of recorded external injuries does not, by itself, exclude the acts alleged. Conversely, a medical history is not an independent determination that the applicant committed the offence. The crime-scene team collected clothing bearing suspected stains and suspected condoms from the bathroom drainage pipe.

13. The child's no-objection dated 5th August, 2026 has also been considered. It expresses willingness for the applicant to be released; it does not retract the allegations or state that the earlier statement was false. Her position on bail is entitled to consideration, but it cannot determine the application independently of the accusation and the circumstances disclosed

by the record. At the same time, the mere filing of a no-objection is insufficient to conclude that the applicant procured it through pressure from custody. To that extent, the inference drawn by the Special Court need not be adopted. The concern regarding influence arises independently from the applicant's alleged threats, his position within the household and the child's dependence upon that household.

14. Learned Advocate's submission that the seized documents cannot be altered does not fully answer that concern. The prosecution depends substantially upon the child's oral evidence and the evidence of persons to whom she made disclosures. Recording their statements during investigation does not secure their evidence against subsequent pressure. The papers concerning the child's production before the Child Welfare Committee also record the need for care and protection because she had been residing in the applicant's house. Considered with the alleged repeated threats, these circumstances disclose a concrete concern regarding her ability to testify freely. The proposed conditions of attendance, sureties and exclusion from the locality would address attendance and physical proximity, but do not sufficiently answer the risk of influence through the existing family relationship at this stage.

15. The applicant's asserted absence of antecedents, permanent residence, cooperation and the period of custody have been weighed in his favour. His detention cannot be continued as punishment, and the gravity of the accusation alone would not justify refusal of bail. Here, however, there is specific prima facie material alleging repeated assaults upon a dependent child, coupled with threats and a substantial concern regarding interference with her evidence. The period of custody disclosed by the record does not presently establish such prolonged or oppressive delay as would outweigh those considerations. The appropriate course is to require prompt progress of the trial. On an independent consideration of the material after submission of the charge-sheet, this Court is not persuaded to release the applicant on bail at this stage.

16. Bail Application No.1897 of 2026 is accordingly rejected.

17. The Special Court shall give priority to recording the child's evidence, if not already recorded, and proceed with the trial expeditiously in accordance with Section 35 of the POCSO Act, avoiding unnecessary adjournments and ensuring the safeguards prescribed for the child.

18. All observations in this order are confined to the decision on bail. The Special Court shall decide the case on the evidence adduced before it, uninfluenced by these observations.

(HITEN S. VENEGAVKAR)
JUDGE

Tandale