



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 771 OF 2025

**GOPAL HARIDAS KALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Applicant : Mrs. Lomte Ashwini Annasaheb
APP for Respondents/State : Mr. Aftab Ahmed Khan

Advocate for the Respondent No.2 : Mr. Shardul Shinde h/f
Mr. B.D. Rahte

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CORAM : MEHROZ K. PATHAN, J.

DATE : 25th FEBRUARY 2026

PER COURT :

1. Heard the learned Counsel for the Applicant, the learned Counsel for the Respondent No.2 and the learned APP for the State.
2. The Applicant has approached this Court, seeking anticipatory bail in connection with Crime No.50/2025 registered with Yusuf Wadgaon Police Station, Taluka Ambajogai District Beed for the offences punishable under Section 137(2) and 3(5) of Bharatiya Nyaya Sanhita, 2023.
3. The learned Counsel for the Applicant submits that the Applicant was protected by this Court vide interim order dated 07.05.2025. The Applicant has complied with all conditions imposed

by this Court under the said interim order and has cooperated with the investigation. The charge-sheet has been filed on 08.09.2025 and is now registered as SCC No. 84/2025. The victim was aged 17 years and 8 months at the time of the incident, and taking into consideration her age, this Court granted protection to the Applicant. The learned Counsel for the Applicant further submits that after attaining the age of majority, the Applicant has solemnized marriage with the victim, and the necessary certificate to that effect has been produced, taken on record, and marked as 'X' for identification. The learned Counsel for the Applicant thus submits that the victim had left the company of her parents of her own free will, and there are photographs and WhatsApp chat messages to demonstrate that the Applicant was in a consensual relationship with her. Considering the fact that the charge-sheet has now been filed against the Applicant, it is prayed that this Court may grant anticipatory bail to the Applicant by confirming the interim order dated 07.05.2025.

4. As against this, the learned APP as well as the learned Counsel for Respondent No. 2 strongly oppose the present application on the ground that the victim, daughter of the complainant, was a minor at the time of the incident. It is submitted that the Applicant enticed the minor victim to leave the company of her guardian, took her away, and forcibly subjected her to sexual intercourse. The statement of the victim has also been recorded under Section 164 of the Cr.P.C., wherein she reiterates that the Applicant kidnapped her and confined her in a room for a month.

The offence being serious in nature, the fact that the Applicant has now married the victim shall not constitute a ground for granting anticipatory bail. Taking into consideration the gravity of the offence, it is prayed that the anticipatory bail application of the Applicant be rejected.

5. I have gone through the investigation papers made available by the learned APP, which have now culminated in the filing of the charge-sheet. A perusal of the same shows that the victim has stated in her statement under Section 164 of the Cr.P.C. that the Applicant has not committed any sexual intercourse with her. The photographs, WhatsApp chat messages, as well as the marriage certificate produced on record, demonstrate that the victim had a consensual relationship with the Applicant. The victim was aged 17 years and 8 months at the time of the incident. The Division Bench of this Court in the judgment of **Sunil Mahadev Patil Vs. State of Maharashtra**, 2015 SCC OnLine Bom 6204, was pleased to observe as under :

“7. In the case of S. Varadarajan (supra) though the age of consent though as per law was 18 years, when the girl eloped with the accused, she was approximately 17 years and 9 months old. The Hon’ble Supreme Court in the case of S. Varadarajan has distinguished Section 361 on the point of taking from the guardian or enticing the girl and the girl herself leaving the house of the parents of her own and accused allowing her to be in his company and has held that it not a case of rape. In the case of S. Varadarajan, the matter was finally heard and the accused was convicted. In appeal, the decision of the Hon’ble Supreme Court can be culled out that if a girl takes initiative or she is active in taking decision of going away with the boy and she understands the meaning of man-woman relationship and of marriage, then the rigor of offence is reduced.

8. *It is to be noted that the case of S. Varadarajan was decided in the*

year 1967 when the women were not enjoying the freedom which today the women have. Albeit the Hon'ble Supreme Court then has taken a pragmatic view and has acquitted Varadarajan. Now we come across such cases everyday. If a girl is a minor between the age group of 15 to 18 years and if it can be safely inferred that her consent was obvious, then it is a mitigating circumstance. Some trial Courts dealing with such Bail Applications, especially after Nirbhaya case, started taking a strict approach and the accused are denied the bail only on the ground that the prosecutrix being minor below 18 years, her consent is immaterial, therefore, in the case of rape on such minor, no bail can be granted. This is a matter of concern."

6. Thus taking into consideration the aforesaid observations of the Division Bench of the Bombay High Court in the aforesaid judgment, and also considering the fact that the Applicant was protected by the interim order dated 07.05.2025 and is now married to the victim, I see no impediment in confirming the interim order. Hence the following order :

ORDER

- (i) The application is allowed.
- (ii) The interim order dated 07.05.2025 is hereby confirmed.
- (iii) The Applicant is directed not to tamper with the evidence and shall not threaten the complainant or her family members.
- (iv) The Applicant shall attend the trial on each and every date unless so exempted by the trial on emergency conditions.
- (v) The Applicant shall submit his Aadhar and PAN Cards to the Investigating Officer and detailed addresses and phone numbers of himself and two of the near relatives.
- (vi) A single violation of the aforesaid conditions, would entitle the

prosecution to seek cancellation of bail of the present Applicant on that ground.

(vii) With the aforesaid directions, the application is disposed of.

MEHROZ K. PATHAN
JUDGE

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