



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

APPLICATION FOR CANCELLATION OF BAIL NO.230 OF 2025

XYZ
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicant : Mr. Kiran P. Rathod

APP for Respondent-State : Ms. P. V. Diggikar

Advocate for Respondent No.2 : Mr. G. D. Rathod, Mr. A. S. Avhad

...

CORAM : SACHIN S. DESHMUKH, J.

DATE : 28-01-2026

PER COURT:-

1. The applicant prays to cancel the bail granted to respondent no. 2 vide order dated 20.11.2025, on remand report passed by the learned Incharge Additional Sessions Judge, Paithan, District Chatrapati Sambhajinagar, in Crime No.410 of 2025 registered with Pachod Police Station, Aurangabad, for the offence punishable under Sections 137(2), 64(2)(f)(i)(m), 69, 87 of the *Bhartiya Nyaya Sanhita, 2023*.

2. The prosecution's case is that on 22.10.2025, the parents of the victim traveled to Adul for their younger daughter's medical treatment. Upon return, the victim's parents discovered the victim was missing. They searched the entire village and nearby areas, but despite all efforts, the victim could not be found. They believed an unknown person lured and kidnapped the minor for reasons unknown.

3. Subsequently, the victim appeared at the Pachod Police Station and provided a statement (MCR). However, the learned Sessions Court released the accused on a personal recognizance (PR) bond of ₹25,000 within 24 hours, without considering the victim's statement and the gravity of the offenses. After the complaint was registered, the respondent/accused and his relatives issued a threat. When the informant was at her house, the accused and his relatives started an argument, demanding permission for the accused to marry the victim. They threatened that if she did not solemnize the marriage, he would kidnap and marry her. The informant lodged a non-cognizable case regarding this incident on 30.11.2025.

4. Eventually, the applicant was arrested on 19.11.2025 and was produced for remand before the I/c. Additional Sessions Judge, Paithan. The Sessions Judge, through a cryptic order, ruled that the grounds and reasons for the arrest were unjustified, deeming the arrest illegal and unsustainable. Consequently, the Judge directed the immediate release of the applicant on the execution of a PR bond of Rs.25,000. This order is now being challenged in this Court by the victim.

5. Learned counsel for the applicant/victim submits that the accused faces grave and serious charges under the POCSO Act, 2012, including kidnapping and aggravated sexual assault on a

minor. The Counsel emphasizes that the grounds for arrest were duly informed to and acknowledged by the accused, making the impugned bail order, which cited illegal arrest reasons, unsustainable.

6. It is further submitted that the bail order is defective, mechanical, and non-speaking. Furthermore, since his release, the accused has threatened the victim and her family, misusing his liberty and demonstrating a clear risk of tampering with evidence and influencing witnesses. Therefore, the applicant prays the non-speaking and mechanical order under challenge be quashed and set aside.

7. The learned A.P.P. has placed on record the grounds of arrest those were served upon the accused. As such, supported the applicant and prayed for setting aside the unsustainable order.

8. The learned counsel for respondent No. 2 submits that the grounds of arrest were not recorded in conformity with Section 47(1)(2) of the BNSS Act, contending it was merely an intimation and not a proper notice of the grounds for arrest. Therefore, supported the order passed by the lower court.

9. The learned counsel for Respondent no. 2 has placed heavy reliance on the judgments of the Honourable Apex Court in the following cases;

- (i) *Vihaan Kumar vs. State of Haryana and another, (2025) 5 SCC 799;*
- (ii) *Mithabhai Pashabhai Patel and others vs. State of Gujarat, (2009) 6 SCC 332;*
- (iii) *Mihir Rajesh Shah vs. State of Maharashtra and another, 2025 SCC OnLine SC 2356.*

As such, prayed for the rejection of the application as unsubstantiated.

10. Upon hearing the respective learned counsel for the litigating sides and perusing the material placed on record, this Court is conscious of the principle that it is trite that this Court does not, normally, interfere with an order granting bail to the accused. However, it is equally incumbent upon the Court to ensure that exercise of discretion in granting bail is judicious and cautious, in compliance with the established legal principles and procedures.

11. As a matter of record, the victim is a minor who was lured by the accused and sexually assaulted. The Incharge Sessions Judge failed to appreciate the fact that the grounds of arrest were duly served upon the accused and acknowledged and the same is corroborated by the details provided by the Investigating officer.

12. It is evident that the I/c. Sessions Judge completely overlooked the crucial fact that the victim was a child and legally

incapable of consenting to sexual intercourse, which is a key element under the POCSO Act. The learned Sessions Judge ought not to have enlarged the accused, given the gravity and seriousness of the allegations in the complaint.

13. The correctness and legality of an order granting bail is always tested on the anvil of whether there was an improper or arbitrary exercise of discretion. The test is whether the bail order is perverse, illegal, or unjustified. The order under challenge clearly fails this test, as it was rendered cryptically despite due service of notice. Furthermore, the learned I/c. Sessions Judge completely ignored the potential impact of releasing the respondent/accused on the prosecution witnesses and, predominantly, the victim.

14. Apparently, while considering the application for bail, the learned Judge failed to consider relevant factors. The Honourable Apex Court, in ***Prabhakar Tewari vs The State Of Uttar Pradesh, AIR OnLine 2020 SC 96***, defined the scope of interference in bail orders, noting that such orders are liable to be set aside if the opinion of the Court is not borne out from a *prima facie* view of the evidence on record.

15. Thus, although the record indicates that the grounds of arrest were duly served upon the accused, the In-charge Sessions Judge proceeded to pass a cryptic, unreasoned, and non-speaking order. Such order act is inherently unsustainable and is hereby

challenged as bad in law. In light of the settled principles laid down by the Honourable Apex Court in the case of ***Mahipal v. Rajesh Kumar, (2020) 2 SCC 118***, I am of the considered opinion that the learned Judge erred by ignoring the severity of the POCSO offence and the seriousness of the potential punishment upon conviction.

16. Equally, it is a well-settled principle of law that enlarging an accused on irrelevant considerations or through the incorrect appreciation of facts constitutes a mechanical act that results in a miscarriage of justice. This Court is empowered to interfere with the order under challenge as the non-consideration of relevant material, especially in the wake of the notice indicating the grounds of arrest have been duly informed and served upon the accused.

17. There is no debate regarding the mandates underscored in the case of ***Vihaan Kumar*** (supra), which are as follows;

- (i) The constitutional mandate of informing the arrestee of the grounds of arrest is mandatory for all offences, including those under the Penal Code (now BNS 2023); and
- (ii) These grounds must be communicated in writing in a language the arrestee understands.

As these mandates were duly complied with by the Investigating Officer, the perversity of the In-charge Sessions

Judge in failing to acknowledge this renders the order unsustainable.

18. A perusal of the record further indicates that the learned In-charge Sessions Judge rendered the arrest illegal merely because the Investigating Officer sought judicial custody rather than police custody. Such an approach is flawed, particularly when the accused is charged under the POCSO Act, which demands a higher threshold of judicial sensitivity and statutory rigour. While evaluating a bail application, the court is duty-bound to consider several critical factors beyond the technicalities of custody. These include;

- (a) *The nature and gravity of the offence, especially given the heinous nature of sexual crimes against children.*
- (b) *The prima facie satisfaction of the court regarding the support for the charge based on material evidence.*
- (c) *The severity of the punishment in the event of a conviction.*
- (d) *The possibility of the accused fleeing or absconding from justice.*
- (e) *The risk of tampering with evidence or intimidating material witnesses, particularly the victim, who remains highly vulnerable.*
- (f) *The antecedents of the accused and their standing in society.*
- (g) *The danger of the accused repeating the offence if released.*

19. In the present case, these essential factors were not dealt with by the court. Instead, the learned Judge proceeded with a mechanical release of the accused without a judicious application of mind to the merits of the case. Such an order is *ex facie* unsustainable and is liable to be quashed and set aside. Consequently, the bail granted to the accused is liable to be cancelled in order to prevent a manifest miscarriage of justice.

20. Hence, following order;

ORDER

- (i) The application for cancellation of bail is allowed.
- (ii) The impugned order dated 20.11.2025, on remand report rendered by the learned Incharge Additional Sessions Judge, Paithan, District Chatrapati Sambhajinagar, in Crime No.410 of 2025 registered with Pachod Police Station, Aurangabad, for the offence punishable under Sections 137(2), 64(2)(f)(i)(m), 69, 87 of the *Bhartiya Nyaya Sanhita*, 2023, is quashed and set aside.
- (iii) Respondent No.2/accused is directed to surrender before the concerned jurisdictional court within a period of one week from today.
- (iv) In the event of failure to do so, the trial Court shall take appropriate steps in accordance with law to secure the custody of respondent No.2/accused.

[SACHIN S. DESHMUKH]
JUDGE