Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3751 OF 2026

Zahir Harun Shaikh .. Applicant
Versus
State of Maharashtra & Anr. .. Respondents

WITH
BAIL APPLICATION NO. 2602 OF 2026

Azar @ Azaruddin Shoukat Shaikh .. Applicant
Versus
State of Maharashtra & Anr. .. Respondents

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- Mr. Gaurav Dnyandeo Kakade a/w Mr. Swapnil Pawar, Mr. Rohit Jain, Mr. Suraj Pansare, Mr. Shankar Mudhal, Ms. Srushti More, Ms. Mohini Sondekar & Mr. Shubham Jadhav, Advocates for Applicant in BA 3751/26
- Mr. Shivkumr S. Jangwad, Advocate for Applicant in BA 2602/26
- Ms. Sangeeta E. Phad, APP for State
- Mr. Himanshu Mane a/w Ms. Sanjana Shinde & Mr. Soham Bhosale i/by Mr. Prakash Salsingikar, Advocates for Respondent No. 2
- Mr. Amit Patil, PSI, Bhigwan Police Station, Pune Rural

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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 9, 2026

P. C.:

1. Bail Application No. 2602 of 2026 is not listed on board. However, considering that the same pertains to a co-accused (uncle of the Applicant in BA 3751/26) in the same FIR, it is taken on board and determined.

2. Heard Mr. Kakade, learned Advocate for Applicant in BA 3751/26; Mr. Jangwad, learned Advocate for Applicant in BA 2602/26 & Ms. Phad, learned APP for State.

3. By the present Applications filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (**BNSS**), Applicants - accused are seeking bail in connection with C.R. No.36 of 2026 registered with Bhigwan Police Station, Pune Rural for the offences punishable under Sections 137(2), 309(4) and 3(5) of the Bharatiya Nyaya Sanhita 2023 ("**BNS**") and subsequently, Sections 64(2)(i) (m), 74, 75(2), 351(2) of the BNS and Sections 4, 6, 8 and 12 of Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**') were added.

4. On 05.10.2026, after hearing Mr. Kakade, the following order was passed in Bail Application No. 3751 of 2026:-

> *"1. Heard Mr. Kakade, learned Advocate for Applicant and Ms. Phad, learned APP for Respondent No.1.*
>
> *2. The Applicant has filed this Application for seeking bail. He is arrayed as an Accused in C.R. No. 36 of 2026.*
>
> *3. At the outset, Mr. Kakade has persuaded me to consider the contents of the order passed by this Court while granting Anticipatory Bail to other co-accused persons copies of which are appended at page page No.86 and more specifically details of which are stated on page No.88. I have perused the same with the able assistance of Mr. Kakade. The prosecutrix here is 21 years old and an adult. The Applicant happens to be her neighbour. Allegation against the Applicant is that the Applicant had kidnapped her, assaulted her but there is prima facie material placed on record to show that the prosecutrix had herself wanted to marry the Applicant and had made attempts to also elope with the Applicant on at least two to three occasions which failed due to the presence of the elderly persons in the family. Incident in question happened in a public place in the presence of*

*the brother and the mother of the prosecutrix. Provisions of the Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO Act**') has also been incidentally applied on the premise that in the year-2022, the Applicant was 17 years old and a minor and therefore the Applicant is also indicted.*

4. However indictment of Applicant is after a hiatus of almost more than 4 years which is prima facie seen from the record. Though delay may not be fatal to the lodgment of the First Information Report under the POCSO Act but each case turns on its own facts.

5. An arguable case is undoubtedly made out by Mr. Kakade for grant of bail. However since there is an indictment under the POCSO, I direct issuance of notice to Respondent No.2. Humdast permitted.

6. Learned APP appears in this present matter and waives service on behalf of Respondent No.1.

7. Investigating Officer is directed by this Court to depute a responsible lady Police Officer to serve copy of this order and Bail Application on Respondent No.2 and / or legal guardian and obtain her consent as to whether she requires legal representation through legal aid. The consent of Respondent No.2 shall be apprised to the Court on the next adjourned date through the learned APP. Let the aforesaid exercise be carried out within a period of one week from today.

8. Considering the strong facts in the present case as argued by Mr. Kakade, I am inclined to direct the prosecution to take steps immediately and apprise the Court on the next adjourned date about the consent of Respondent No.2.

*9. A further order will be passed on **08th October 2026**. To be placed under the caption '**First on Board**'.*

5. Incidentally, this Court had the opportunity of dealing with the Bail Application of the younger brother of Applicant in BA 3793/26. That Bail Application No. 3793 of 2026 was determined by this Court on 07.10.2026 and the younger brother was granted bail. This Court has referred to and relied upon the order dated 24.08.2026 passed in Anticipatory Bail Application No. 1643 of 2026 of the uncle of the Applicant in Bail Application No. 3751 of 2026. It is *prima facie* seen that the victim is today adult when the present Application is filed but she has alleged that when she was 17 years old, she was violated.

Incidentally, it is seen that initially, the victim had filed a case of kidnapping against the Applicant's family members. Thereafter, the case of assault was also added and now after four years, the charge of POCSO is added.

6. On the face of record, the order passed by the Coordinate Bench (Coram : Madhav J. Jamdar, J.) while granting anticipatory bail to to the family member of the Applicant had categorically returned a finding that the victim has in her own statement recorded by the police on 22.02.2026 stated that the relationship between the families was extremely cordial and her own brother was the best friend of accused No. 1 and most importantly, she having confessed that she was having a love affair with the accused No. 1 and they both intended and planned to marry each other but due to certain specific reasons which I do not wish to delineate in my order, there was a fall out.

7. Applicant in Bail Application No. 2602 of 2026 who is the uncle of the present Applicant has also been roped in unfortunately by the victim in the present case. The supplementary statements which are recorded by the victim, the victim's mother are in fact contrary to the victim's own statement which was recorded in February 2026 when the victim was sent to the Government Shelter Home and there the

police recorded her statement. The dichotomy is *prima facie* seen by the Court.

8. In view of the above, *prima facie* case is made out for grant of bail by both the Applicants. Hence, both the Applicants are granted bail on the following terms and conditions:-

(i) Applicants are directed to be immediately released on bail from prison in connection with C.R. No.36 of 2026;

(ii) Applicants are directed to be released on bail on furnishing P.R. Bond of Rs. 10,000/- each (Rs. Ten Thousand each) with one or two sureties in the like amount;

(iii) Applicants shall report to the Investigating Officer at concerned Police Station, once every month on the first Sunday of the month between 10:00 a.m. to 12:00 p.m.;

(iv) Applicants shall co-operate with the conduct of trial and attend the Trial Court on all dates, unless specifically exempted and will not take any unnecessary adjournments, if they does so it will entitle the prosecution to apply for revocation of this order;

(v) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vi) Applicants shall not influence any of the witnesses or tamper with the evidence in any manner;

(vii) Applicants shall keep the Investigating Officer informed of their current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable; and

(viii) Any infraction of the conditions shall entail cancellation of bail granted to the Applicants.

9. Needless to state that the above observations will not come in the way of trial as they are *prima facie* in nature based on the submissions made and the material placed before this Court.

10. Both Bail Applications are allowed and disposed of in the above terms.

[MILIND N. JADHAV, J.]

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RAVINDRA MOHAN AMBERKAR

Digitally signed by RAVINDRA MOHAN AMBERKAR
Date: 2026.10.09 20:49:02 +0530