

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3036 OF 2025**

Ashish Premchand Pandey Applicant

V/s.

The State of Maharashtra and anr. ...Respondents

Mr. Veerdhawal Deshmukh for the Applicant.
Mr. S.S. Ghag, APP for Respondent No.1 - State.
Mr. Danish Patel, appointed Advocate for Respondent No.2.
Mr. Sanjivani Todkar, PSI, Kolsewadi Police Station, present.

**CORAM: SHYAM C. CHANDAK, J.
DATED : 15th JUNE, 2026**

1) Mr. Ghag, learned APP, at the outset, tendered a report received from Kolsewadi Police Station, Thane. Mr. Deshmukh, learned Counsel for the Applicant tendered photocopy of an FIR bearing C.R.No.189 of 2021, dated 29.04.2021, registered with Kolsewadi police station, the School Bonafide Certificate of the victim alongwith the statement of the victim under Section 183 of Bharatiya Nagarik Suraksha Sanhita, 2023 obtained during the investigation of the said FIR No.189 of 2021. The aforesaid documents of FIR and statement of victim are taken on record and marked as 'A', and 'C', respectively. Mr. Patel, learned Counsel for Respondent No.2 has tendered a photocopy of a birth certificate of the victim and stated that the same was not collected by the police during investigation of this crime. The said document is taken on record and marked as 'B'.

2) Present Application arising out of an FIR bearing C.R.No.668/2024 registered with Kolsewadi Police Station, Thane for the commission of the alleged offences punishable under

Sections 363, 366A, 376(2)(i), 376(2)(j) of the Indian Penal Code, 1860 and under Sections 4 and 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012, on the report filed by the mother of the victim against the Applicant.

3) Heard Mr. Deshmukh, learned Counsel for the Applicant, Mr. Ghag, learned APP for Respondent No.1 – State and Mr. Patel, learned Counsel for Respondent No.2.

4) The prosecution case is that on 07.06.2024, the informant - mother of the victim girl, aged 14 years, filed a report that the victim was kidnapped by the Applicant. On 06/06/2024, at about 10.30 pm, the victim returned home in an inebriated state. On inquiry the victim disclosed that, on 06/06/2024, at about 02:00, p.m., she had gone to her friend Zoya, at Kalyan. At about 03:00 p.m., the Applicant came there and on the false pretext that her father had called her, took her to Kailashnagar bus stop, Kalyan (East). Meanwhile, the Applicant called his friend – Abhishek Dere and told him to come there alongwith a bike. Accordingly, the Applicant and co-accused Abhishek Dere came there. The two then took her to one Dhaba. There, the Applicant forced her to consume beer by threatening to kill her father. Then the two accused took the victim at one building where, co-accused Abhishek Dere left them. Further, the Applicant took the victim in one room in that building and forcibly committed rape on her. Consequently, the victim got tired and therefore, slept there. She then woke up at 7.00 pm. Further, the Applicant was roaming with her in Kalyan (East) area. At about 09:00 pm, the Applicant took her to an unknown lodge, near Vitthalvadi railway station. However, they did not get a room for want of her identity proof. The Applicant then gave her Rs.50 and told her to go home and

threatened her not to disclose about the incident to anyone otherwise he would kill her father. The Applicant came to be arrested on 08/06/2024. His prayer for bail has been refused by the Special/Sessions Court. Hence, this Application.

5) Mr. Deshmukh, learned Counsel for the Applicant submits that the said FIR bearing No.189 of 2021 of Kolsewadi police station was registered on the report of the mother of the victim. In the above referred documents of C.R. No.189 of 2021 registered with Kolsewadi police station, the age of the victim has been recorded as 11 years. However, there is difference in her date of birth recorded in the school document and her birth certificate produced today. As per the ossification report, the victim was aged 16 to 18 years. Considering the material on record, the possibility of consensual relationship cannot be ruled out. Therefore, the Applicant may be released on bail.

5.1) In reply, Mr. Ghag, the learned APP and Mr. Patel, learned appointed Advocate for Respondent No.2 have submitted that the victim was just aged 14 years at the time of the incident. However, the Applicant kidnapped and forcibly raped her. He had also threatened her. Additionally, Mr. Patel submitted that the previously, there are eight antecedents against the Applicant which includes bodily offences as well as offence of robbery. Therefore, and looking at the nature of the offence, the Applicant is not entitled for bail.

6) I have considered the rival submissions. In the School Bonafide Certificate, in numeric form, the date of the victim has been mentioned as 20.11.2010. But in words, it is stated as Twentieth November Two Thousand Fourteen. In the Birth Certificate, her date of birth has been recorded as 20.11.2010.

However, as per the ossification report, the victim was aged 16 to 18 years. Thus, there is inconsistency about the age of the victim at the time of the offence. Therefore, the Ossification Test assumes significance.

7) As alleged, after committing the rape, the Applicant roamed alongwith the victim for about two hours. Meanwhile, they also went to check-in one hotel where they were denied the access for want of the victim's identity proof. However, during that entire period, the victim did not raise any shout or call for help. The victim has not explained as to why even after the rape, she was roaming with the Applicant and wanted to have a room in the hotel. In view of these facts and circumstances, *prima facie*, it appears that the alleged sexual intercourse was consensual. The investigation of the crime is over. The Applicant is not likely to abscond and tamper with prosecution evidence. He is on bail in the earlier crimes.

8) In view thereof, the Applicant is entitled for bail. Hence, following Order :-

(i) The Applicant – Ashish Premchand Pandey be released on bail in C.R.No.668/2024 registered with Kolsewadi Police Station, Thane for commission of the offences punishable under Sections 363, 366-A, 376(2)(i), 376(2)(j) of the Indian Penal Code, 1860 and under Sections 4 and 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012, on his executing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

(ii) The Applicant shall mark his attendance at Kolsewadi Police Station, Thane on 1st day of each calender month between 11:00 a.m. to 2:00 p.m. till conclusion of the trial.

(iii) The Applicant shall regularly attend the proceedings before the jurisdictional Court unless exempted by the said Court, for the reasons to be recorded in writing.

(iv) The Applicant shall not tamper with the prosecution evidence and shall not directly or indirectly influence upon the prosecution witnesses to prevent them from deposing against him.

(v) The Applicant shall reside outside the jurisdiction of Kolsewadi Police Station, Mumbai, till the trial in the crime is over except the date on which attendance is required in aforesaid Session case.

(vi) On being released from jail, the Applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination to the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the Applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

9) Bail Application stands disposed of in aforesaid terms.

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(SHYAM C. CHANDAK, J.)