

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 3580 OF 2025

Faiyyaz Ziauddin Patel
Through His Father
Ziyauddin Babulal Patel

...Applicant

Versus

State of Maharashtra & Anr.

...Respondents

Ms. Sahana Manjesh, for the Applicant.

Ms. Poonam Bhosale, APP for the Respondent No. 1 – State.

Mr. Abhilash Kurey a/w Ms. Snehal Kolamkar, Ms. Tejashree Kolamkar, Mr. Mohnish Kolamkar, Mr. Shaheen Siddiqui, Allwyn D'Silva & Mr. Vishal Padvi, *for Respondent No. 2.*

Mr Jitesh Shingote – PI attached to *Byculla Police Station, Mumbai.*

CORAM DR. NEELA GOKHALE, J.
DATED: 10TH FEBRUARY 2026

PC:-

1. By this Application, the Applicant seeks his release on bail in connection with the C.R. No. 654/2024 dated 23rd September 2024 registered with the Byculla Police Station, Mumbai for the offences punishable under Sections, 64(1), 64(2)(i), 65(1), 351 and 3(5) of the The Bharatiya Nyaya Sanhita, 2023 (for short '**BNS**') and Sections 4, 8 and 12 of

the Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO**').

2. The Applicant in the present matter is a Child in Conflict with Law (for short '**CCL**') and was 16 years of age at the time of the incident. The victim girl and the Applicant were alleged to be in a relationship. Taking advantage of the said relationship, the Applicant took nude photographs of the girl and forwarded them to his friends namely, Arshad Khan and Aman. These two friends are also co-accused. They are adults. Additionally, the victim girl's mother, who is the First Informant observed some money in her cupboard to be missing. She asked the victim about the missing amount, but the victim did not give any appropriate answer.

3. On 22nd September 2024 at about 10.00 a.m., the First Informant noticed that her gold ornaments were also missing. She suspected something more than a loss of money and prodded the victim. Parallely, the CCL met the victim and requested for physical relations with her and despite her

refusal, he forcibly established sexual relations with her. He also took inappropriate photographs of the victim. He had forcible physical relationships with her on a number of occasions, by blackmailing her with her compromised photographs. It is alleged by the prosecution that the CCL had taken money from his friends i.e. the co-accused, in lieu of, showing them the photographs of the victim and telling them that he would facilitate their physical relationship with her.

4. Subsequently, even the co-accused namely, Arshad Khan met the victim girl. He showed her the said photographs and sexually assaulted her. Thereafter, the victim disclosed her trauma to the mother and the mother then made a complaint to the police resulting in the present FIR. The Applicant and the co-accused were arrested on 28th April 2025. Accused No. 2, Arshad Khan, was enlarged on bail by a co-ordinate bench of this Court. Relying on that order even the other accused i.e. Akib Khan was enlarged on bail by the Sessions Court.

Ironically, the present Applicant, despite being a juvenile, remains incarcerated in the Observation Home till date.

5. The Applicant made an application seeking bail before the Children's Court (the Special Judge of the POCSO Act) however, by order dated 19th July 2025, the bail application was rejected. Hence, he is before this Court seeking the relief as prayed.

6. Ms. Sahana Manjesh, learned Advocate for the Applicant, at the very outset, has brought to my attention Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short '**JJ Act**'). She submits that a child in conflict with law must be released on bail with or without surety or be placed under the supervision of a Probation Officer or under the care of a fit person. She submits that admittedly, the present Applicant is a juvenile and has suffered incarceration in the form of detention in the Observation Home for a period of one year and four months. She prays that the Applicant be enlarged on bail.

7. Ms. Poonam Bhosale, learned APP, representing the State in the present matter, was requested by order dated 2nd February, 2026 to place on record, a report of the Applicant's psychological and physical condition, issued by the Superintendent of the Dongri Children's Home and also the Probation Officer of the child. She has tendered the same today. The Report is taken on record. She submits that she leaves it to the Court to pass appropriate orders.

8. Mr. Abhilash Kurey, learned counsel for Respondent No.2 (victim / First Informant) states that the victim resides at Byculla and releasing the Applicant on bail is likely to cause further trauma to her. He submits that the co-accused are already enlarged on bail and it is likely that, if the present Applicant is also released, they may intimidate her with the photographs, and traumatize her further. He also submits that the forensic report of the mobile phone of the Applicant and co-accused is yet to be placed on record by the prosecution; in fact, the FSL Report has not yet been received by the

Investigating Officer. Mr. Abhilash Kurey also submits that pursuant to the co-accused being enlarged on bail, the brother of Accused No. 2-Arshad Khan has further intimidated the victim, by sending inappropriate messages on her Telegram messaging app. He further threatened her to withdraw the case. Hence, the victim's mother has lodged another FIR against the said brother. The said brother is also a minor and is released by the Juvenile Justice Board on bail. He thus submits that the Bail Application be rejected.

9. I have heard learned counsel for the respective parties and perused the papers with their assistance.

10. Admittedly, the victim was aged 16 years at the time of the sexual assault by all three accused. However, the two accused who are major are already released on bail. Admittedly, the Applicant does not have antecedents. Presently, he is in the care and custody of the Observation Home at Dongri.

11. Section 12 of the JJ Act reads thus:

“12. Bail to a person who is apparently a child alleged to be in conflict with law.—(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in charge of the police station, such officer shall cause the person to be kept only in an observation home 1[or a place of safety, as the case may be] in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.”

12. A plain reading of Section 12 of the JJ Act reveals that despite a bailable or non-bailable offence alleged to have been committed by a juvenile or child in conflict with law, he/she is to be released on bail; save and except, if there appear reasonable grounds that his release is likely to bring him into association with any known criminal or expose the said person to moral or physical danger or that his release would defeat the ends of justice. I have perused the report submitted by the Probation Officer/ Superintendent of the Children's Observation Home, carefully. The Probation Officer/Superintendent of the Home was assisted by the Psychologist/counselor while making the report. The recommendation by the Superintendent and Probation officer read thus: -

“Recommendation by Superintendent and Probation Officer: Considering the overall assessment of child, it is observed that the

child has shown positive behavioral changes during the institutional period, remained co-operative with counselor, educators, staff and actively participated in counseling, educational and life skills programs.

In view of the principles underlying section 12 of the Juvenile Justice (Care and Protection of children) Act, 2015, continued institutional stay of the child may not be conducive to his mental and emotional well-being.

The parents of child have informed that the victim's family has shifted to another place and at present, they do not apprehend any risk or threat to the safety or well-being of the child. The parent have further expressed that they are capable of taking due care of the child and ensuring his proper supervision and well-being.

Keeping in view the best interest of the child and the principal of reformation and rehabilitation under the Juvenile Justice (Care and protection of children) Act, 2015 it is most respectfully submitted that the further necessary order may kindly be passed."

13. The Report submitted by the Probation Officer/ Superintendent of the Observation Home, assisted by the Psychologist and counselor, reveals that the Applicant has shown positive behavioural changes during the institutional

period, and that his parents have also expressed their intent and capability, willingness of taking care of the Applicant and ensuring the proper supervision. In these circumstances and also having regard to the fact that the co-accused, who are equal participants in the offence, if not a degree more, are enlarged on bail, by a co-ordinate bench of this Court, I am inclined to enlarge the Applicant on the following conditions:

ORDER

- i) The Applicant be enlarged on bail, on executing PR Bond in the sum of Rs.50,000/ with one or two local sureties in the like amount;
- ii) The Applicant shall attend the Trial Court concerned on each and every date unless exempted by the orders of the Trial Court concerned;
- iii) The Applicant shall have interaction with the Probation Officer, at least once a week, on the date, day and time fixed by the probation officer.

iv) Since the victim resides at Byculla, the Applicant shall not enter the jurisdiction of the Byculla Police Station till the statement of the victim is recorded by the Trial Court.

v) If the Applicant holds a passport, he shall deposit the same with the Police Station concerned;

vi) The Applicant shall not leave India, without the permission of the Trial Court;

vii) The Applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

viii) The Applicant shall inform his latest place of residence and contact number immediately after being released and / or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the Police Station concerned;

ix) The Applicant to co-operate with the conduct of the trial;

x) Any infraction of the aforesaid conditions shall entail cancellation of bail.

14. Application is allowed in the above terms and is accordingly disposed of.

15. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the learned Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

16. Considering the sensitivity in the present case, the trial court is requested to expedite the trial and in any event record the statement of the victim within a period of six months from today.

(DR. NEELA GOKHALE, J)