

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3807 OF 2025**

Omprakash Jogiram Morya	...Applicant
<i>Versus</i>	
State of Maharashtra and Anr.	...Respondents

Mr. Kunal Aher a/w Gaurish Satpute, *for the Applicant.*
Ms. Shilpa K. Gajre-Dhumal, *APP for the Respondent - State.*
PSI – Dilip Deshmukh, Investigating Officer, present.

CORAM R. M. JOSHI, J.
DATED: 10TH MARCH 2026

PC:-

1. The Applicant seeks his release on bail in connection with C.R. No.200 of 2024 registered with Kalyan Taluka Police Station, for the offence punishable under Sections 376 and 363 of the Indian Penal Code, 1860 ('**IPC**') and Sections 4 and 6 of the Protection of Children from Sexual Offences ('**POCSO**') Act, 2012.

2. Learned counsel for the Applicant, submits that this Court, vide order dated 7th January, 2025, granted liberty to the Applicant to prefer an application after recording evidence of witness. It is his submission that, inspite of the said order, till date the charge has not been framed against the present Applicant. According to him, the Applicant is arrested on 29th March, 2023, and on the ground of long incarceration, he deserves to be enlarged on bail. On merits, it is his submission that the statement of the victim is inconsistent with the one recorded under Section 164 of the Cr.PC. He further drew attention of the Court to a medical report which, according to him, indicates that her version is not supported by the same. Learned counsel for the Applicant submits that during the course of the investigation the ossification test was carried out, wherein the age of the victim is found to be between 18 to 25 years at the time of occurrence of the incident. He, therefore, submits that the provisions of POCSO Act has no application to the present case.

3. Learned counsel for the Respondent No.2 and learned APP oppose the bail application by drawing attention of the Court to the statement of the victim and the medical evidence on record.

4. At the outset, this Court would like to record that in a number of cases it is found by this Court that the prosecution / investigating agency takes no steps for framing of charges or examining witnesses, leading to the situation that, on account of long incarceration, the accused is required to be enlarged on bail. Similar thing has happened in the present case. In spite of order dated 7th January, 2025 passed by this Court showing its disinclination to grant any relief, with an observation that liberty was granted to file a fresh application after recording of the evidence of the witness, for over a period of one year and three months, the charge has not been framed before the Trial Court. The learned APP sought to justify the same by contending that it is the duty of the Court to frame the charge. Upon his submission, this

Court has called upon the learned APP to point out any material on record to indicate that at least draft charge has been placed before the Trial Court. The learned APP is unable to bring any such material on record. This Court therefore has reason to believe that the sole idea behind not proceeding with the trial and not even taking steps for framing of the charge is somehow to help the Applicant to seek bail from this Court. Such tactics are deprecated.

5. On merit, a perusal of the record indicates that the victim, in her statement recorded before the police under Section 161 of the Cr.PC, so also in the statement recorded before the Magistrate under Section 164 of the Cr.PC, has given a similar version of the occurrence of the incident. *Prima facie*, there are no material inconsistencies in victim's statement. Apart from this, her statement gets support from the medical evidence on record, wherein the opinion expressed by the medical officer with regard to occurrence of the incident of she being subjected to sexual intercourse.

Though it is argued on behalf of the counsel for the Applicant that there is ossification test was conducted indicating age of the victim to be 18 to 25 years, as a matter of fact the victim is in a Children's Home. *Prima facie*, this indicates that she is below the age of 18 years, and for the said reason she is being kept in the Children's Home. The contention of the learned counsel for the Applicant, therefore, cannot be considered at this stage, though the same could be taken up before the Trial Court. Suffice it to say that *prima facie* there is evidence on record to show the involvement of the Applicant in this crime.

6. This Court is not inclined to pass any order of grant of bail on the ground of non-framing of charge, as this Court has already observed that this would be an attempt on the part of the investigating agency in order to facilitate the Applicant to seek bail from this Court on that ground.

7. Hence, Bail Application is rejected.

8. 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.

(R. M. JOSHI, J)