



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [BA] NO. 1301 OF 2025.

Abhishekh Atish Gupta.

-VERSUS-

State of Maharashtra and another.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri R.M. Daga, Advocate for the Applicant.

Shri V.A. Thakare, A.P.P. for Non-applicant No.1/State.

Ms V.A. Warhade, Advocate (Appointed) for Non-applicant
No.2.

CORAM : M.M. NERLIKAR, J.

DATE : JANUARY 09, 2026.

Heard learned Counsel for the parties.

2. The present application is filed by the applicant under Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023 for grant of regular bail in connection with Crime No.219/2025 registered with Sindhi Railway Police Station, District Wardha for the offence punishable under Sections 64[1], 356[2], 351[2] of the Bhartiya Nyaya Sanhita, 2023 and Section 4 of the Protection of Children from Sexual Offences Act (POCSO). After investigation, the prosecution has filed

charge-sheet on 06.10.2025, under the aforesaid sections and also added Sections 66[E], 67[A], 67[B] of the Information Technology Act, 2000.

3. The complaint in the present matter was lodged on 11.08.2025 by the father of the victim. In complaint he stated that when the victim was pursuing her studies in the school, the school van driver used to send her son [present applicant] with the school bus for picking and dropping children. It is stated that the applicant used to get close to the victim. On 28.06.2025 in the morning at 9.30 to 10.00, the applicant called the victim to his house. At that time, there was no one in the house. The applicant took victim to his room and on the pretext of marrying her, forced himself upon her, to which the victim resisted. He forcefully put his private part in the hand of the victim and asked her to perform oral sex. This act was video-graphed by the applicant on his mobile phone. The applicant on the pretext of making the said video viral, started blackmailing the victim, asking her to establish physical relation. It is further stated that the said video was seen by the informant on 18.07.2025, when the same was kept as a 'story'

on his snapchat ID by the applicant and the same was shared by another accused Krushna @ Mayank Badwaik. The applicant came to be arrested on 11.08.2025.

4. The learned Counsel appearing for the applicant submits that the applicant is 18 years of age and at the time of incident, the victim was aged 17 years and 8 months. He further submits that there was love affair between the applicant and the victim and due to fault on the part of the victim, the video went viral. He has invited my attention to the statement of victim by contending that if the same is perused, it can be gathered that whatever had occurred, was with the consent of both of them. Not only that after the alleged incident of oral sex was alleged, both i.e. the applicant and the victim were in contact with each other, however, on 18.07.2025, while the victim was watching the mobile phone, at that time she had downloaded 'snapchat' and in that she had opened the ID of the present applicant, where she found that a story was put by the applicant on the snapchat showing oral sex, however, while hiding the video, the victim inadvertently shared that video to others. Immediately the said video was deleted by the victim

herself. However, one Mayank Badwaik had seen that video before it was deleted by the victim. Accordingly it is submitted that the victim at the relevant time was of understandable age, and therefore, it cannot be said that the alleged act was committed without the consent of the victim. Lastly, he submits that considering the age of the applicant [18 years], he deserves to be released on bail.

5. On the other hand, the learned A.P.P. appearing on behalf of the State and the learned Counsel appearing for the victim, vehemently opposed the application. They submit that three fold submissions are made, firstly that the applicant has video-graphed the forced incident of oral sex; secondly, the applicant has kept the minor girl at his house for 11 days without the permission of her guardian, and thirdly, the aforesaid obscene video was kept as a story on the snapchat. All these factors go to show that the applicant has indulged in a heinous crime, which is alleged against him. They further submit that merely completion of investigation and filing of charge sheet would not be sufficient, when there is a serious offence. The offence was committed against a child, who was

below 18 years of age at the time of incident, and therefore, the provisions of Protection of Children from Sexual Offences are also invoked. They further submit that if bail is granted, a wrong signal would be sent to the society at large, and therefore, they prayed that such applicant does not deserve any indulgence, and it is liable to be rejected.

6. Upon consideration of the rival submissions and after considering the material placed on record, it is not in dispute that though the incident took place on 18.06.2025, father of the victim has lodged the first information report on 11.08.2025. Thus, the first information report is registered almost after 1 ½ months of the incident. It is further to be noted that the accused was arrested on 11.08.2025, and after completion of investigation, charge sheet in the matter is filed on 06.10.2025. Admittedly the applicant is 18 years of age.

Perusal of the statement of the victim, as well as the history narrated by her during her medico legal examination, it appears that the victim on her own accord has left the company of her father and started resided with the applicant from 30.07.2025. The victim has not stated about any history of

sexual assault. Further from perusal of statement of the victim it could be gathered that the applicant and victim are conversant with each other, and out of that relationship and love affair the incident of oral sex has occurred. No doubt, at the time of incident, the victim was below the age of 18 years, i.e. 17 years 8 months, meaning thereby the victim is a child within the meaning of Section 2[d] of the POCSO Act, and therefore her consent is irrelevant. Rather, her consent is no consent in the eyes of law. However, the fact cannot be ignored that she was 17 years and 8 months old. Therefore, considering the fact which surfaces on record and considering the age of the applicant, coupled with the fact that the applicant is in custody since 11.08.2025, and there is no likelihood of trial commencing immediately in near future, I am inclined to grant bail. Hence, the following order.

ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The applicant /accused Abhishekh Atish Gupta be released on regular bail in connection with Crime

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No.219/2025 registered with Sindhi Railway Police Station, District Wardha for the offence punishable under Sections 64[1], 356[2], 351[2] of the Bhartiya Nyaya Sanhita, 2023 and Section 4 of the Protection of Children from Sexual Offences Act (POCSO), on his furnishing P.R. Bond of Rs. 25,000/- with one surety in the like amount.

- (iii) The accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- (iv) The accused shall provide his residential address and cell number to Police Station concerned and shall not change his place of residence without prior intimation to the Investigating Agency.
- (v) The accused shall attend each and every date of trial regularly. If he fails to attend the trial for two consecutive dates, his default would entail the State to ask for cancellation of bail.
- (vi) Fees of the appointed Counsel be quantified and paid as per Rules.

JUDGE