



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

CRIMINAL APPLICATION [B.A.] NO. 1364 OF 2025

Sanjay s/o Palturam Kumare

-- VERSUS --

State of Maharashtra and Another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. S.D. Umredkar, Advocate (appointed) for the Applicant.

Mr. V.A. Thakre, A.P.P. for the Non-applicant No.1/State.

Ms. Archana Murrey, Advocate (appointed) for the Non-applicant No.2.

CORAM : M.M. NERLIKAR, J.

DATE : JANUARY 20, 2026.

Heard.

2. The present application is filed seeking regular bail in Crime No.21/2021 for the offence punishable under Sections 376(2)(J), 376(AB), 376(3) and 508 of the Indian Penal Code (IPC) and Sections 4, 6 and 10 of the Protection of Children from Sexual Offences Act, 2012, (POCSO), registered with Police Station Korchi, District Gadchiroli.

3. The informant who is the step mother of the minor victim girl aged 10 years alleged that one month before when the victim was playing with her friends, the applicant lured her on the pretext that her parents are calling her. He took the victim on his bicycle to Cremation ground where he had forceful

sexual intercourse with the victim. Thereafter, she was brought back and left with her friends. The grand mother of the victim noticed that she was limping and upon enquiry victim narrated the entire incident to her grand mother who informed others. As the accused did not return to village for one month, therefore, F.I.R. was lodged belatedly.

4. The present application is filed on the ground of delay in trial. The learned counsel appearing for the applicant submits that the F.I.R. was registered on 09/06/2021. Since from the year 2021, till today, the applicant is behind bar. The learned counsel appearing for the applicant further submits that there is no progress in the trial, though the charges are framed on 15/12/2023.

5. On the other hand, the learned A.P.P. and the learned counsel appearing for non-applicant No.2 vehemently opposes the application on the ground that the victim is aged about 10 years and the applicant has committed heinous offence. It is further submitted that considering the gravity of the offence, bail may not be granted.

6. The Supreme Court in the cases below has held as under:-

(i) Javed Gulam Nabi Shaikh VS State of Maharashtra and Another, (2024) 9 SCC 813;

(ii) Sheikh Javed Iqbal VS State of Uttar Pradesh, (2024) 8 SCC 293;

In *Javed Gulam Nabi Shaikh (supra)*, it is held in para 17 as under:-

“17. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

In *Sheikh Javed Iqbal (supra)*, it is held in Paragraph No.32 as under:-

“32. This Court has, time and again, emphasized that right to life and personal liberty enshrined Under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an Accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the Accused-undertrial Under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the Rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But It would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional

jurisprudence. In any view of the matter, K.A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.”

7. After considering the rival submissions, it appears that, this Court, on 09/12/2025 called the status report. It further appears that status report was received on 19/12/2025 from Principal District & Sessions Judge, Gadchiroli, wherein it is observed as under:-

“ With reference to the subject noted above, I have to submit that the charge in this case is framed on 15.12.2023. The case was pending to the file of Additional Sessions Judge-1 (Special Judge), Gadchiroli. After suspension of the Presiding Judge, undersigned got number of matters transferred from said Court to this Court. However, it is true that thereafter recording of evidence of witnesses has not yet commenced. This is discussed in Bail Order dated 8.9.2025 below Exh.17 which is rejected considering the gravity of the offence.”

8. Thus from the above, it is crystal clear that though the charges are framed on 15/12/2023, there is no progress in the matter. Admittedly, the applicant was arrested on 09/06/2021, more than 4 years and 7 months have lapsed. Considering the fact that the applicant has undergone 4 years and 7 months imprisonment in jail, I am of the considered opinion that the applicant be released on bail by

imposing stringent conditions. Hence, the following order:-

ORDER

(i) The Criminal Application is **allowed;**

(ii) The applicant/accused (Sanjay S/o Palturam Kumare) be released on regular bail in connection with in Crime No.21/2021 for the offence punishable under Sections 376(2) (J), 376(AB), 376(3) and 508 of the Indian Penal Code (IPC) and Sections 4, 6 and 10 of the Protection of Children from Sexual Offences Act, 2012, (POCSO), registered with Police Station Korchi, District Gadchiroli, on his furnishing a P.R. bond of Rs.50,000/- (Rupees Fifty Thousand) with two solvent sureties 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, or fails to comply with the aforesaid conditions, his default would entail the State to ask for cancellation of bail;

(vi) The applicant shall not reside within the territorial jurisdiction of Botekasa, Tahsil Korchi, District Gadchiroli;

(vii) Fees of the appointed counsel be quantified and paid as per rules;

(viii) Pending Misc. Applications, if any, also stands disposed of.

[M.M. NERLIKAR, J]