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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3605 OF 2026

Devesh Ravindra Sawant

.. Applicant

Versus

State of Maharashtra and Anr.

.. Respondents

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- Mr. Ganesh Gole a/w. Ateet Shirodkar, Advocates for Applicant.
- Ms. Keral Mehta, appointed Advocate for Respondent No.2
- Mr. Yogesh Najhwa, APP for Respondent – State.
- Mr. Salman Khatib – PSI Roha Police Station Raigad

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CORAM : MILIND N. JADHAV, J.**DATE : OCTOBER 07, 2026.****P.C.:**

1. Heard Mr. Gole, learned Advocate for Applicant, Ms. Mehta learned Advocate for Respondent No.2 and Mr. Nakhwa, learned APP for Respondent No.1– State.

2. Present Application is filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 by Applicant seeking enlargement on bail in connection with C.R. No.I-22 of 2025 registered with Roha Police Station, Raigad for the offences punishable under Sections 6(2) (i), 64(2)(m), 65(1), 75(2), 78(2), 351(2) read with Section 3(5) of Bharatiya Nyaya Sanhita, 2023 and Sections 4,6,8 and 12 of Protection of Children from Sexual Offences Act, 2012.

3. The Applicant herein is arraigned as Accused No.1. There are 2 accused persons in the present crime. Applicant is 26 years old

whereas Respondent No.2 – Victim is 14 years old at the time of incident. FIR is lodged on 11.06.2025. Case of the First Informant – Victim against both the accused persons is on a different footing but with respect to the same crime. Accused No.2 has already been enlarged on bail. In this Application, only Accused No.1 is concerned. According to First Informant, Applicant used to chat with her on Instagram from January 2025 onwards and both Applicant and First Informant were admittedly in a love relationship with each other. Applicant has specifically so stated in the FIR. She has next stated she had a breakup in April 2025 but within 4 days thereafter immediately patched up and continued friendship and love relationship with Applicant. Next she has alleged that on 3 specific dates, between 02.06.2025 and 08.06.2025, Applicant called her to a house belonging to his friend which was situated opposite her house and both of them had physical relationship when no one was present in the said house. Thereafter First Informant has stated that she befriended Accused No.2 on Instagram and at his behest continued chatting with him by viewing the contentious adult content sent by Accused No.2. On this basis First Information Report is filed by the mother of Respondent No.2 - victim.

4. I have considered the material placed before me and also heard the learned appointed advocate Ms. Mehta for the First Informant.

5. It is seen that victim herself has admitted about she being in

a love relationship with the Applicant for more than 5 and half months. What is crucial is that the victim's version in the FIR is contradictory to the specific version narrated by the grandfather of the victim whose mobile phone was used by the victim for chatting and establishing contact with both the accused persons. Statement of grandfather is appended at page No.124 and certain material details are stated incorrectly therein. Next it is seen that statement of independent witness, copy of which is appended at page No. 123, who is the owner of the house where the multiple episodes occurred has categorically stated that the said house was under renovation and under construction for the past 4 years and in an incomplete state with no one residing therein. The statement of the grandfather and the victim therefore does not reconcile with the statement of the owner of the said house, when they state that the episodes occurred inside the friend's house when no one was present in the house behind the locked door.

6. Further two issues *prima facie* persuade me to consider the case of the Applicant for bail. One is the Instagram chat between the victim and Accused No.2 which *prima facie* show that victim was fully aware about her actions about taking protection while committing the said Act and second, most importantly the Medico – Legal History, copy of which is appended at page Nos.80, 83 and 86 which does not support the case of the victim itself, and the prosecution at all. Once I have read the aforesaid, there is *prima facie* doubt with regard to the

statement of the victim hence Applicant has made out a case for grant of bail.

7. As held by this Court in the case of ***Sunil Mahadev Patil Vs. State of Maharashtra***¹ it is true that a wrong doer is to be punished, guilty is to be convicted. However at the stage of bail, Court has to consider *prima facie* under what circumstances the offences are committed by the accused. The offence of rape can be distinguished on the basis of the intention of the accused. In the aforesaid judgment the learned Court summed up the ethos of relationship between young boys and girls aptly in paragraph No.11 of the said judgment which reads thus:-

“11. Today teenagers are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and a woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship. Sexual urge differs from person to person and there cannot be any mathematical formula in respect of sexual behavioral pattern of teenagers, as biologically whenever the child turns into puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all considered as a sexual maturation. Therefore, some sects with view to regularize sexual behaviour of the community have acknowledged this biological factor and therefore, the early age marriages are performed in some religions or communities. Taking into consideration this social and biological factors, the law makers have considered the age of 15 as a age of consent when the marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such cases.”

8. While sitting as a Bail Court what I have experienced is that

¹ BA No.1036 of 2015 – Decided on 03.08.2015

public prosecutors oppose bail pleas vehemently even in the cases of long incarceration pending trial under the mistaken impression that the crime in question is serious and therefore the Court should not grant bail to the accused person. This mindset and approach of the prosecution needs to change. It is observed that in cases under POCSO, the statute itself provides a speedy trial within 1 year under Section 35 of the POCSO Act, but that is seldom achieved. Even in such cases where trials are pending over many years without even being commenced, the prosecutors raise vehement objection to Bail Applications on the ground of severity of the crime.

9. Next the decision of this Court (Coram: Sandeep K. Shinde, J.) in the case of *Anirudha Radheshyam Yadav Vs. The State of Maharashtra*² is also relevant in the facts of the present case. Relevant paragraph No.4 is reproduced below for reference and reads thus:-

“4.The conduct of the victim is indicative of the fact that she had left the home of her parents by her own will and that she had surrendered to the physical desires of the applicant out of her love and affection for him. It is not the case of the prosecution that the applicant had promised to marry her. Additionally, it is also not a case where under the misconception of the fact, she had served herself to the desire of the applicant for physical relations. No doubt, that the applicant, under the preview of POCSO Act, is a minor, however, the facts of the present case indicate that she had sufficient knowledge and capacity to know full import of what she was doing and had only thereafter voluntarily joined the complainant (applicant).”

10. There is no doubt that presumption under Section 29 exists

² Criminal Bail Application No.2632 of 2019 decided on 09.01.2020

but it is not an absolute presumption. This Court is of the opinion that presumption would come into play only when prosecution is able to bring on record facts that would prima facie form the foundation for the presumption. Otherwise, all that the prosecution would be required to do is to raise some allegation against the accused person and claim that the case projected by it is true. Court will have to be on guard to see that application of presumption without adverting to the essential facts shall not lead to injustice since we are at a prima facie stage and trial has not even begun. The presumption under Section 29 of the POCSO Act is not absolute. Attention in this regard is invited to the decision of High Court of Kerala in the case of ***Joy Vs. State of Kerela Represented through the Public Prosecutor***³ in a similar case where age of prosecutrix as below 18 years and a similar argument was made. The relevant paragraph Nos.9 to 11 are reproduced below:-

“9. Mere delay in reporting the matter to the authorities concerned, especially sexual assault on a minor girl, is immaterial and it would not be fatal to the prosecution case. However, in the instant case, it is not the delay alone that is significant. The significant fact is that the complaint was given to the authorities concerned only two weeks after the mother received the lawyer notice from the petitioner claiming a huge amount as professional fees. This raises suspicion on the prosecution case against the petitioner. When the victim had disclosed the matter to her mother in July, 2018, one would have expected the mother to report the matter to the authorities concerned much earlier than 22.09.2018. The fact that she reported the matter only after receiving a lawyer notice from the petitioner assumes significance.

10. This court is not oblivious to Section 29 of the Act which contains a legislative mandate that the court shall presume commission of the offences by the accused unless the contrary is

³ 2019 SCC OnLine 783.

proved. Section 29 of the Act states that where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and 9 of the Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. The court shall take into consideration the presumption under Section 29 of the Act while dealing with an application for bail filed by a person who is accused of the aforesaid offences under the Act (See State of Bihar v. Rajballav Prasad, (2017) 2 SCC 178 : AIR 2017 SC 630).

11. However, the statutory presumption under Section 29 of the Act does not mean that the prosecution version has to be accepted as gospel truth in every case. The presumption does not mean that the court cannot take into consideration the special features of a particular case. Patent absurdities or inherent infirmities or improbabilities in the prosecution version may lead to an irresistible inference of falsehood in the prosecution case. The presumption would come into play only when the prosecution is able to bring on record facts that would form the foundation for the presumption. Otherwise, all that the prosecution would be required to do is to raise some allegations against the accused and to claim that the case projected by it is true. The courts must be on guard to see that the application of the presumption, without advertent to essential facts, shall not lead to any injustice. The presumption under Section 29 of the Act is not absolute. The statutory presumption would get activated or triggered only if the prosecution proves the essential basic facts. If the accused is able to create serious doubt on the veracity of the prosecution case or the accused brings on record materials which would render the prosecution version highly improbable, the presumption would get weakened. As held by the Apex Court in Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 : AIR 2011 SC 312, frivolity in prosecution should always be considered and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of anticipatory bail. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. It should necessarily depend on facts and circumstances of each case in consonance with the legislative intention.”

11. The Supreme Court in the above case has hastened to add that the accused person is still an under-trial prisoner and not a convict and the overarching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside

lightly however stringent the law may be.

12. In view of the aforesaid facts emanating from record which show consensualness of victim as also in view of the *prima facie* case made out by the learned Advocate for Applicant, I am inclined to release the Applicant on bail.

13. In view of the above the following order is passed:-

- (i) Applicant is directed to be immediately released on bail from prison in connection with C.R. No.I-22 of 2025;
- (ii) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs. 25,000/- (Rs. Twenty Five Thousand only) with one or two sureties in the like amount;
- (iii) Applicant shall report to the Investigating Officer at concerned Police Station, once every month on the first Sunday of the month between 10:00 a.m. to 12:00 p.m.;
- (iv) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates, unless specifically exempted and will not take any unnecessary adjournments, if he does so it will entitle the prosecution to apply for revocation of this order;
- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) Applicant shall not influence any of the witnesses or

tamper with the evidence in any manner;

(vii) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable; and

(viii) Any infraction of the conditions shall entail cancellation of bail granted to the Applicant.

14. Needless to state that the above observations will not come in the way of trial as they are *prima facie* in nature based on the submissions made and the material placed before this Court.

15. This Court appreciates the assistance rendered by Ms. Mehta, learned Advocate appointed through the Legal Aid to espouse the cause of Respondent No. 2. Her fees be paid by the High Court Legal Aid Services Authority as per rules on production of a server copy of this order and other compliances in accordance with the decision of this Court in the case of *Sanjyot Nitin Telharkar v. The State of Maharashtra & Anr.*⁴ and the Schedule under Regulation 18(1) of the Maharashtra State Legal Services Authority Rules, 1998.

16. Bail Application is allowed and disposed of in the above terms.

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[MILIND N. JADHAV, J.]

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⁴ Judgment dated 25.09.2024 passed in Misc. Civil Application No. 134 of 2024