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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.879 OF 2025

Mayur Raju Wankhede

... Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

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GANESH
KULKARNI

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Mr. Aniket U. Nikam i/by Mr. Sumit Patil for the applicant.

Mrs. Megha S. Bajoria, APP for respondent No.1-State.

Mr. Viral Mukte for respondent No.2-victim (appointed as Legal Aid).

Mr. Sunil Bile, Malawani Police Station, Mumbai, is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 2, 2025

P.C.:

1. By way of this bail application filed under Section 439 of the Criminal Procedure Code, 1973, the applicant seeks regular bail in connection with Crime Register No.1017 of 2024 registered at Malawani Police Station, Mumbai. The applicant stands accused of committing offences punishable under Sections 137(2) and 126(2) of the Bharatiya Nyaya Sanhita, 2023, as well as under Sections 4, 6, 8, and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. According to the prosecution story, on 31st July 2024, a 17-year-old victim boy himself approached the police station and

lodged a complaint regarding the alleged incident. In his complaint, the victim stated that he was in the habit of visiting Aksa Beach along with his friends for the purpose of fishing. On the fateful day of 31st July 2024, at approximately 4:00 p.m., the victim had gone to Aksa Beach accompanied by his friend Satish Jaiswal for their usual fishing activity. After successfully catching some fish, both of them were sitting on the beach premises when the alleged incident occurred.

3. At around 6:30 p.m., an unknown person approached them and questioned them as to why they were sitting at that particular location. The said person then told the victim that he should accompany him to see what had transpired in the nearby bushes. Initially, both the informant and his friend refused to go with the unknown person. However, the said person persisted in his conversation and succeeded in taking the informant to the bushes situated near Aksa Beach. Upon reaching the bushes, the informant could not observe anything unusual, following which he attempted to leave the spot. However, the unknown person prevented him from departing and forcibly removed the informant's clothing. The accused then allegedly inserted his private part into the victim's anus, thereby committing unnatural carnal intercourse with him against his will and consent. Despite the victim's attempts to resist and oppose the said act, he was unable to do so effectively as the accused person possessed greater physical strength than him. The victim was overpowered and subjected to the alleged sexual assault against his will.

4. Subsequent to the commission of the alleged offence, the victim began crying, whereupon the accused person revealed his identity as Mayur Wankhede and callously told the victim that he was free to inform anyone about what had transpired. Immediately thereafter, the victim fled from the spot and approached his friend, to whom he disclosed the entire incident. Following the disclosure, both the victim and his friend proceeded to the victim's residence, where they informed the victim's mother about the occurrence. Subsequently, they approached the local police station and lodged a formal complaint regarding the incident. Upon registration of the First Information Report, the accused was arrested, and a thorough investigation was conducted by the investigating agency, culminating in the filing of a charge-sheet before the competent court.

5. The learned Advocate appearing for the applicant has drawn the attention of this Court to various aspects of the case, including the statement of the victim, statements of witnesses, and the medical examination report. He has vehemently contended that there exist material inconsistencies in the manner of assault as described by the victim, which create serious doubts about the veracity of the prosecution case. The learned counsel has particularly emphasized that initially, in his complaint, the victim described the accused as an "unknown person." However, contradictorily, in the later portion of the same FIR, the victim has specifically mentioned the applicant's name as Mayur Wankhede. This inconsistency, according to the Applicantcounsel, is fatal to the prosecution case, especially when no Test Identification Parade

has been conducted to establish the identity of the accused. Furthermore, the learned counsel has argued that considering the respective ages and physical attributes of both the victim (17 years old) and the applicant, it appears highly improbable and practically impossible that the applicant could have overpowered the victim without there being any visible signs of physical resistance or struggle on the victim's body. Drawing the Court's attention to the medical examination report, the Applicantcounsel has submitted that the medical findings do not conclusively indicate the recent origin of any alleged injuries. According to him, the medical evidence fails to corroborate the victim's version of events, thereby creating reasonable doubt about the occurrence of the alleged incident. Based on these submissions, the learned counsel has contended that the applicant has successfully created sufficient doubt regarding his involvement in the alleged offence at this preliminary stage itself. He has argued that such doubt constitutes a prima facie case in favor of granting regular bail to the applicant, and therefore, the applicant deserves to be released on bail.

6. Per contra, the learned Additional Public Prosecutor (APP) and the learned Advocate appointed to represent the victim (respondent No.2) have strongly opposed the bail application. They have contended that the alleged assault on the victim is adequately supported by the medical examination that was conducted immediately after the incident. The prosecution has specifically drawn the Court's attention to the medical examination report, which clearly states that there are definitive signs

suggesting recent forceful penetration in the victim's anus, and that sexual violence cannot be ruled out based on the medical findings. They have emphasized that the medical examination was conducted on the very next day following the alleged incident, thereby ensuring the authenticity and reliability of the medical evidence. The prosecution has further highlighted the timeline of events to demonstrate the prompt reporting of the incident. According to them, the alleged incident occurred at approximately 6:30 p.m. on 31st July 2024, and the FIR was lodged at around 21:30 hours (9:30 p.m.) on the same day, specifically naming the applicant as the accused person. This prompt reporting, according to the prosecution, negates any possibility of fabrication or afterthought. Additionally, the prosecution has submitted that the victim's statement is further corroborated by his statement recorded under Section 164 of the Criminal Procedure Code before the learned Magistrate. Such statement, having been recorded under oath and in the presence of a judicial officer, carries significant evidentiary value and lends credibility to the victim's version of events. Based on these submissions, the prosecution has argued that at this stage, the applicant has completely failed to make out a prima facie case establishing his non-involvement in the alleged offence. They have therefore prayed that the present bail application deserves to be rejected, and the applicant should continue to remain in judicial custody pending the completion of trial proceedings.

7. This Court is mindful of the fact that the present case involves allegations under the Protection of Children from Sexual

Offences Act, 2012 (POCSO Act), which is a special legislation enacted to provide protection to children from sexual offences. The POCSO Act has been enacted with the noble objective of safeguarding the interests of children and ensuring their protection from sexual exploitation and abuse. While considering bail applications in cases involving POCSO Act, this Court is guided by the principles laid down by the Hon'ble Supreme Court in various judgments, including the landmark decision in Satpal Singh vs. State of Punjab, wherein it has been held that while bail is the rule and jail is the exception, special consideration must be given to the nature of the offence, the age of the victim, and the potential impact on the victim and society at large. Section 12 of the POCSO Act, under which the applicant has been charged, deals with sexual harassment of a child, while Sections 4, 6, and 8 pertain to penetrative sexual assault and aggravated penetrative sexual assault. These are serious offences that carry stringent punishment and require careful judicial scrutiny while considering bail applications.

8. After careful perusal of the material on record and considering the submissions made by both sides, this Court finds that there exists sufficient prima facie evidence to suggest the involvement of the applicant in the alleged offence. The medical examination report constitutes crucial evidence in the present case. The report clearly indicates signs of recent forceful penetration and states that sexual violence cannot be ruled out. The medical examination was conducted on 1st August 2024, i.e., the day immediately following the alleged incident on 31st July 2024. The

temporal proximity between the incident and medical examination lends credibility to the medical findings and negates the possibility of the injuries being caused at any other time or by any other means. The Applicant counsel's contention that the medical report does not indicate recent origin of injury is not sustainable when the report specifically mentions signs suggesting recent forceful penetration. The medical opinion, being that of a qualified medical practitioner, carries evidentiary value and cannot be brushed aside at this preliminary stage.

9. While the Applicant has highlighted the apparent inconsistency regarding the identification of the accused, this Court notes that the victim initially described the accused as an "unknown person" but subsequently provided his name as "Mayur Wankhede." This sequence of events is not uncommon in cases of sexual assault where the victim may initially be in shock and trauma, and the accused may reveal his identity during or after the commission of the offence, as alleged in the present case. The fact that the accused allegedly disclosed his name to the victim, as mentioned in the FIR, provides a reasonable explanation for how the victim came to know the accused's identity. The absence of a Test Identification Parade, while being a procedural lapse, does not automatically vitiate the prosecution case, particularly when the accused's identity was allegedly disclosed by himself to the victim.

10. The victim's statement recorded under Section 164 of the Criminal Procedure Code before the learned Magistrate carries significant evidentiary value. Such statements are recorded under oath and in the presence of a judicial officer, thereby ensuring their

reliability and authenticity. The consistency between the FIR and the Section 164 statement strengthens the prosecution case and demonstrates that the victim has maintained his version consistently.

11. The Applicant counsel's argument that it was impossible for the applicant to overpower the 17-year-old victim without signs of resistance lacks merit. Sexual offences often involve psychological coercion, fear, and shock, which may prevent the victim from offering effective physical resistance. The location of the incident (isolated bushes near a beach) and the element of surprise could have facilitated the commission of the offence without necessarily leaving extensive physical marks of struggle. Moreover, the age difference and physical strength comparison cannot be determined solely on the basis of chronological age. The Court cannot speculate on the relative physical capabilities of the parties without concrete evidence.

12. The prosecution has established a clear timeline showing that the incident occurred at approximately 6:30 p.m., and the FIR was lodged at 21:30 hours on the same day. This prompt reporting is consistent with genuine cases and negates the possibility of fabrication or afterthought. The fact that the victim immediately disclosed the incident to his friend and subsequently to his mother before approaching the police demonstrates natural human behavior in such traumatic situations.

13. The allegations against the applicant involve serious sexual offences against a minor. The charges under Sections 4, 6, 8, and

12 of the POCSO Act are grave in nature and carry severe punishment. Section 4 of the POCSO Act prescribes punishment for penetrative sexual assault with imprisonment of not less than seven years, which may extend to life imprisonment. The nature of the alleged offence is such that it not only causes physical harm to the victim but also inflicts severe psychological trauma that may have long-lasting effects on the minor victim. Courts have consistently held that while considering bail in cases involving sexual offences against minors, the traumatic effect on the victim and the possibility of the accused influencing or intimidating the victim or witnesses must be given due consideration.

14. Given the nature of the allegations and the fact that the victim is a minor, there exists a reasonable apprehension that if released on bail, the applicant may attempt to influence the victim or other witnesses. The victim, being a minor, is particularly vulnerable to intimidation or pressure, which could seriously compromise the fair trial of the case. The investigation has been completed and the charge-sheet has been filed, but the trial is yet to commence. During this crucial period, it is essential to ensure that the victim and witnesses are protected from any potential influence or harassment by the accused.

15. While bail is indeed the rule and jail is the exception, this general principle must be balanced against the special circumstances of each case, particularly when dealing with offences against children. The Supreme Court has repeatedly emphasized that in cases involving sexual offences against minors, courts must exercise extreme caution while granting bail. The

triple test for bail - (i) prima facie case, (ii) possibility of the accused fleeing from justice, and (iii) likelihood of the accused tampering with evidence or influencing witnesses - must be applied with special rigor in POCSO cases.

16. In the present case, the prosecution has established a prima facie case against the applicant based on the victim's statement, medical evidence, and other corroborative materials. The possibility of the accused influencing the minor victim or other witnesses cannot be ruled out, particularly given the serious nature of the allegations.

17. After careful analysis of the evidence and materials on record, this Court is of the considered opinion that the prosecution has successfully established a prima facie case against the applicant. The medical evidence corroborates the victim's statement, and the prompt reporting of the incident adds credibility to the prosecution case.

18. The inconsistencies highlighted by the Applicant counsel are not of such magnitude as to completely destroy the prosecution case at this preliminary stage. These are matters that can be properly addressed and determined during the trial when the evidence is examined in detail and witnesses are cross-examined. The applicant has failed to make out a case for bail by showing that the allegations against him are prima facie false or that he has been falsely implicated in the case. The burden on the applicant at this stage is to show that the accusations are groundless, which he has not been able to discharge satisfactorily.

19. Having considered the submissions made by the learned counsel for both parties and after careful perusal of the material on record, this Court is of the firm view that the present bail application lacks merit and deserves to be rejected on the following grounds:

First, the prosecution has established a prima facie case against the applicant based on cogent evidence including the victim's consistent statement, corroborative medical evidence, and prompt reporting of the incident.

Second, the nature and gravity of the offences alleged against the applicant are serious, involving sexual assault on a minor child, which warrants careful judicial consideration before releasing the accused on bail.

Third, there exists a reasonable apprehension that if released, the applicant may influence or intimidate the minor victim or other witnesses, thereby jeopardizing the fair trial of the case.

Fourth, the applicant has failed to demonstrate that the allegations against him are prima facie baseless or that he has been falsely implicated, which is essential for securing bail in cases of this nature.

Fifth, the public interest and the need to maintain confidence in the criminal justice system, particularly in cases involving crimes against children, outweigh the applicant's right to personal liberty at this stage.

20. This Court observes that while every accused person has a fundamental right to liberty, this right is not absolute and must be balanced against the larger interests of justice, public order, and the protection of victims, particularly when the victims are minors. The POCSO Act represents the legislative intent to provide stringent protection to children from sexual offences. Courts, as guardians of justice, have a solemn duty to ensure that this legislative objective is not defeated by a liberal approach to bail in such serious cases. The Court further observes that the trauma suffered by child victims in sexual assault cases is immense and long-lasting. The criminal justice system must be sensitive to their plight and ensure that they are not subjected to further victimization through intimidation or influence by the accused persons.

21. In view of the above analysis and reasoning, this Court hereby rejects the bail application filed by the applicant under Section 439 of the Criminal Procedure Code, 1973.

22. The trial court shall decide the case on its own merits based on the evidence that will be adduced during the trial, and this order shall not influence the final outcome of the case in any manner whatsoever.

23. The bail application accordingly stands rejected and disposed of.

(AMIT BORKAR, J.)