

MHNS070017912024



ORDER BELOW EXHIBIT NO.12
IN SPECIAL (POCSO ACT) CASE NO.117/2024
VADNER KHAKURDI POLICE STATION C.R.NO.0273/2024
THE STATE V/S. SAMADHAN KAILAS PAWAR
(PASSED ON 7th DAY OF JULY, 2025)

This successive application is on behalf of the applicant/accused – Samadhan Kailas Pawar vide Section 483 of the Bhartiya Nagrik Surksha Sanhita, 2023 (BNSS) to enlarge him on bail.

2. This application is strongly opposed on behalf of prosecution as per reply Exh.13.

3. Points for the determination and my findings thereon for the reasons stated below ;

SR. NO.	POINTS	FINDINGS
I.	Whether the successive application for bail is maintainable?	Yes.
II.	Whether grounds are justified to release the applicant/accused on bail vide Section 483 of the BNSS ?	Yes.
III.	What Order ?	The application is allowed.

REASONS

4. Perused application, say filed. Heard learned advocate for the applicant/accused Smt. S.B. Sharma and learned A.P.P Shri. M.S. Fulpagare for State. Heard victim and informant/her maternal uncle and mother of victim. Heard advocate of victim Shri. Y.S. Mankar.

AS TO POINTS NO. I AND II :

BRIEF FACTS OF PROSECUTION :

5. The informant is the maternal uncle of victim. The victim is the girl child aged 13 years 07 months 21 days on the day of incident. The incident took place during the period 20.06.2024 at about 2:00 p.m. to 21.06.2024 at 5.00 a.m. The applicant is aged 35 years and he is married. On 20.06.2024, the victim has gone to one shop at about 2.00 p.m. to purchase snacks. The applicant came over there and asked the victim to come to his home since his mother called her. The victim has gone to his home and then the applicant closed the doors of the house. The applicant removed her clothes forcibly and issued life threats also hit to her. The applicant kept physical relations with her. The applicant has attempted to consume her liquor. She was unconscious. She got up in morning at about 5.00 a.m. and then rushed towards the house of her maternal uncle.

6. On that count, the informant lodged the report dated 21.06.2024 at Police Station, Vadner Khakurdi. The Police Station officer, Vadner Khakurdi registered Crime No.0273/2024 for the offence under Section 363, 376, 366-A, 342, 323, 506 of the Indian Penal Code and under section 4, 8, 12 of the Protection of Children from Sexual Offences Act against accused/applicant.

7. The applicant/accused is arrested on 21.06.2024 and produced before the Court. Initially, he was remanded to police custody till 24.06.2024 and thereafter he was remanded to judicial custody. The applicant/ accused is presently in judicial custody.

THE COMPLIANCE OF SECTION 40 READ WITH RULES- 4(13) AND 4(15) OF THE POCSO ACT - RIGHTS OF VICTIM -

8. Hon'ble High Court in the case of **Arjun Kishanrao Malge Vs. State of Maharashtra and others in Public Interest Litigation No.5 of 2021 Dated 08.04.2021** held that;

“when an application is made before the Court on behalf of the accused, it shall be the duty of the accused to issue notice of hearing of such application to the child's family or as the case may be, the guardian, and where a legal counsel on behalf of the child is already on record, to such legal counsel,

along with all relevant documents and the record necessary for effective participation in the proceedings.”

9. In pursuance of these directions, the notice is issued to the informant/victim. The said notice is served to him. The victim, her maternal uncle and mother were appeared. The audience is extended to them. They strongly objected the application for bail.

10. The hearing of this bail application is conducted *in camera*.

MAINTAINABILITY OF SUCCESSIVE APPLICATION -

11. The first application for bail is dismissed by my learned predecessor as per order dated 06.09.2024. The charge-sheet is filed before this Court on 17.08.2024. The first bail application vide Exh.3 is dismissed by this Court subsequent to the charge-sheet. Hence the present application for bail is successive application.

12. After rejection of above bail application then the present application is filed on 04.06.2025 within a period of 9 months of the rejection of earlier bail application.

13. At this stage, it is relevant to cite the observation of Hon'ble Apex Court in the case of **Kalyan Chandra Sarkar V/s. Rajesh Ranjan @ Pappu Yadav AIR 2005 SUPREME COURT 921** that, *'even though there is a room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier can move a subsequent application.'*

14. Relying upon this observation applied to the facts of present case apparently in the case on hand, the applicant moved application for bail subsequently on the ground that the medical examination of the victim transpires there was no penetration. Thus the medical evidence does not support to the prosecution case as to forcible sexual assault as stated by the informant and victim. These facts ought to have been considered in the bail order of earlier application. Also the providing of liquor to the victim was an attempt as per recitals of FIR then there can be hardly case of unconsciousness of the victim. These are the facts brought to the notice of the Court by virtue of hearing of this successive bail application. Apart from this, the accused is behind bar from last one year and after rejection of first application, in last Nine months, there is no progress in the trial and hearing.

15. Therefore, the applicant has moved this successive application for bail. The grounds mentioned above as to the medical evidence, attempt to provide liquor and no progress in the trial from last Nine months constitute the change in circumstance to move successive application for bail. Hence the present application for bail though successive filed in change circumstance as such it is maintainable. I answer Point No. I in the affirmative.

WHETHER GROUNDS OF BAIL ARE MADE OUT ?

16. At the outset in the light of recitals of FIR, it appears that the victim girl is aged 13 years, 7 month and 21 days on the day of incident. Thus she is a child within the definition of Section 2(d) of the POCSO Act. The applicant is aged 35 years and he is married.

17. In the light of recitals of FIR it appears that the victim has come to the house of her maternal uncle during her school holidays. The informant, his wife, his two children and his parents stays at the house of informant. The victim without informing anyone at the house has gone in the village to purchase snacks in the noon at 2.00 p.m. The shop of snacks is located at a short distance from the house of informant. The said shop and the house of informant were located in a densely

populated area. According to the victim, after purchase of snacks, she was returning to home that time the applicant met him and asked her to come his house since his mother called to the victim.

18. The house of applicant is also located in a densely populated area. There are number of houses from the said shop till the house of applicant. The applicant stays with his wife and mother. At the time of incident, the wife of applicant was at her parental house due to matrimonial discord between them. The mother of applicant stays over there.

19. If the victim has been at the house of applicant at 2.00 p.m. and the applicant has closed the doors then she has every chance of raising alarm. Learned advocate of applicant has placed on record the photographs of the house of applicant, shop and the house of informant. The construction of house of applicant is of a such a nature and it was halfly constructed wall and above to it, there are tin sheds. One can hear the noise of victim easily, if she really could have been at his house from 2.00 p.m. to next day morning 5.00 a.m. The mother of applicant if she has gone in the field for work during day time then she could have returned in the evening. Then in that eventuality it under doubt as to the stay of victim at the house of applicant during entire night.

20. If the accused has used criminal force in commission of offence there are no marks of resistance. Even the medical evidence reveals that there is no penetration. If the victim was with the applicant from 2.00 p.m. to next day 5.00 a.m. then during these 15:00 hours, there could have been traces of penetrative sexual assault. The recitals of FIR depicts accused attempted to provide her liquor. The accused has consumed the liquor and he himself has closed both the doors of the house then there was every chance to her to raise alarm.

21. The victim in morning at 5.00 a.m. on next day came out from the house of applicant when he was under sleep and then she has gone to her house and informed the incident to the informant. Soon thereafter, the informant has not rushed to the house of applicant at 5.00 a.m. itself. Further the statement of shop keeper from where the victim has purchased the snacks is silent as to the presence of applicant at his shop. The applicant has taken her from the shop to his house and during time in a village in noon nobody has seen to them.

22. According to the informant, the victim has not returned to home on the day of incident as such he took search and then back to home and undergone sleep. On next day morning he got up and then started search of her. The victim was aged 13 years and if she was not back to home within

couple of hours and all family members were taking search of her, then the house of applicant was at a walkable distance despite the traces of victim in such a small village could not find out. Thus these facts creates could of suspicion as to the incident as stated by the informant.

23. The victim is aged 13 years 7 months on the day of incident as such she has sufficient age of understanding. If applicant has called her at his house in noon then she could have informed this fact at her house first and then she could have gone at the house of applicant. All these circumstances speaks a loud about the incident.

24. The investigation of the crime is over and charge-sheet is filed. The applicant is behind bar from last more than one year. It would take considerable time to conclude the trial. The victim stays in other village and not in the village of applicant. She came during holidays at the house of informant. Thus, there is no chance of pressurizing to the victim at the instance of applicant. Also the applicant has firm roots in the society as such there is chance of fleeing from justice. He has no criminal antecedents. On all these grounds, applicant deserves for bail. I answer Point No.II in the affirmative. With this, I pass following order ;

ORDER

1.	The application for regular bail vide Section 483 of the BNSS on behalf of the applicant/accused – Samadhan Kailas Pawar is allowed.
2.	The applicant/accused be released on bail on furnishing P.R. and S.B. of Rs.50,000/- (Rs. Fifty Thousand) with one surety in the like amount on the following terms and conditions ;
i.	The applicant/accused shall assist to Investigating Officer whenever called under written intimation.
ii.	The applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the accusations against him so as to dissuade them from disclosing such facts to the Court or to any police officer.
iii.	The applicant/accused shall not tamper prosecution evidence in any manner.
iv.	The applicant/accused shall not contact to victim by any mode and shall not enter her premises of residence and place of her education also the applicant shall not contact to the informant and his family by any mode and shall not enter the premises of residence of informant.
3.	A soft copy of this bail order be forwarded to the applicant/accused through Superintendent, Central Jail, Nashik road by e-mail for information in view of observation of Hon'ble Apex Court in the case of In Re Policy Strategy For Grant of Bail in SMWP (CRIMINAL)

	NO.4/2021, Dated 31.01.2023.
4.	Inform to concerned Police Station accordingly.
	Dictated and pronounced in Open Court.

Place : Malegaon, Nashik.

**(K.G. Paldewar)
Additional Sessions Judge,
Malegaon, Dist. Nashik.**

Date : 07.07.2025.

Arguments heard on	19 th , 26 th Day of June, 2025 and 3 rd Day of July, 2025
Judgment/Order delivered on	07 th Day of July, 2025.
Dictated on	07 th Day of July, 2025.
Transcribed on	07 th Day of July, 2025.
Checked and signed on	07 th Day of July, 2025.

CERTIFICATE

I affirm that the contents of this PDF file
Judgment/Order is same and as per the original
Judgment/Order.

Name of the Stenographer : N.D. Patil,
Name of the Court : Additional Sessions Court,
Malegaon
Date of Judgment/Order : 07.07.2025.
Judgment/Order signed on : 07.07.2025.
Presiding Officer : K.G. Paldewar
Judgment/Order uploaded on : 07.07.2025.