

MHNS070020562019

Sessions Case No. 185 of 2019

The State of Maharashtra
Vs
Shahid Khan Ismail Khan

ORDER BELOW Exh.139
(Passed on 17/03/2026)

1. This is successive application for bail under Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (Old Section 439 of the Code of Criminal Procedure, 1973), for grant of regular bail to accused who is charge-sheeted and facing trial for the offence p/u/s 376(1), 363, 366-A of the Indian Penal Code and Section 4 and 8 of the POCSO Act.

2. Notice of this application was issued to the informant/victim. She appeared through her Ld. Advocate and opposed the bail application by filing her written say at Exh.141.

3. Ld. APP for the State has opposed the application by filing written say of I.O. at Exh. 142.

4. Heard, Shri. K.G. Ansari, Ld. advocate for the accused, Shri. S.K. Sonawane, Ld. APP for the State/Respondent and Shri. S.B. Akkar, Ld. Advocate for the informant/victim. They argued vehemently.

5. Ld. Advocate for the accused submitted as under :-

The accused is in Jail since 04/08/2019. He has filed present application for bail through the Jail Authority. The accused is languishing in Jail for more than 6 years. After recording the evidence of prosecution witnesses the further statement of accused came to be recorded and after hearing the final arguments the case was fixed for judgment. However, the judgment is yet to be delivered by the Court. The accused is suffering from diseases and he requires regular medical treatment. He was admitted in the Government Hospital and undergone surgery for piles/fisheries. He also required to undergo further surgery

as earlier surgery was partly conducted. He is suffering from severe piles and therefore, he is becoming weak. Sometimes he becomes unconscious. Second surgery should be done on him at earliest. He is also suffering from blood pressure and also from pains in the heart. Therefore, he requires urgent medical treatment and second surgery of piles/fisheries. In the case laws stated in the application it is observed by the Hon'ble Higher Courts that if the trial is not concluded within definite period and accused is languishing in Jail for more years then he should be released on bail. All earlier bail applications filed on behalf of accused are rejected on merits. However, considering the physical health of the accused and the change in circumstances the accused has moved this application through Jail Authority. He has not committed the alleged offences. The dispute between the relatives of informant/victim and accused is of a civil nature as it was in respect of money transaction. The informant/victim at the instance of her relative and mother has lodged false report against accused. In the Criminal Writ Petition No. 295 of 2023 filed by the accused, the Hon'ble High Court of Judicature at Bombay in its order dt.20/06/2023, directed the Ld. Additional Sessions Judge/Special Judge (under POCSO Act) to commence the trial of the petitioner as early as possible. Therefore and as the matter is already fixed for judgment, considering the change in circumstances and the ill health of the accused, he be released on regular bail. He is ready to abide all conditions of bail. Therefore, application should be allowed.

6. The Ld. APP for the State and the informant/victim have strongly opposed the application by filing their written say at Exh.142 and 141 respectively. Both have submitted that all witnesses have supported to the prosecution case and there is sufficient evidence to prove the charges framed against accused and as the case is already fixed for judgment and the offence is punishable with imprisonment for life or death, the accused is not entitled for regular bail at this stage as all earlier bail applications are rejected on merits by the Sessions Court

and the Hon'ble High Court. Therefore, the application should be rejected.

7. I have gone through the present application, which is forwarded by the accused to this Court through the Jail Authority. Admittedly, after recording the evidence of prosecution witnesses and the further statement of accused under Section 313 of Cr.P.C. and hearing the final arguments of both sides, the case is fixed for judgment. Due to unavoidable circumstances and as the prosecution has examined several witnesses and because of the paucity of time the judgment is yet to be delivered by this Court. When the case was fixed for judgment the bail application was filed on behalf of accused and it was rejected on merits. Admittedly all earlier bail applications filed on behalf of accused are rejected on merits by this Court, concerned Sessions Judges and the Hon'ble High Court.

8. Punishment prescribed under the provision of Section 4 of the POCSO Act is 'imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine'. In the present case all material witnesses are supporting to the prosecution case. Considering the punishment prescribed for the said offence and other offences for which the accused is facing trial and also considering the fact that the case is already fixed for judgment and soon the judgment can be delivered by this Court, it can be said that the accused is not entitled for regular bail as prayed. So far as the medical grounds which are stated or pleaded in the bail application, it can be said that already the accused has received the medical treatment in the concerned Government Hospitals and the Jail Authority is also taking the care about his medical examination and care of his health. If at this stage bail is granted to the accused, considering the conduct of accused before his arrest, it can be said that there is every possibility that the accused may abscond or he will not attend the Court regularly. Further, considering the punishment

prescribed under Section 4 of the POCSO Act and as the case is for judgment, it cannot be said that the accused is entitled for bail as he is in Jail for more than 6 years. In short, it can be said that the accused is not entitled for regular bail. As such, the application is to be rejected. Hence, I pass the following order.

ORDER

1. The application is hereby rejected.
2. The case is fixed for judgment on 23/03/2026.
3. Inform accordingly, to the D.G.P./P. P., the concerned Jail Authority and Police Station Officer of concerned Police Station.

(Soft copy of this bail order be sent to the concerned Jail Authority through E-mail for providing its copy to the accused.)

Date- 17/03/2026
Malegaon.

(K. R. Patil)
Addl. Sessions Judge, Malegaon.
Dist. Nashik.