

Special (POCSO) Case No. 11 of 2025.*The State Vs. Narayan Vishal Ambekar***Order Below Exh.03.**

1. Applicant / accused **Narayan Vishal Ambekar**, resident of Kheldari, Tal. Chandwad, Dist. Nashik has filed this application for bail after filing of charge-sheet under section 483 of BNSS, 2023. He is arrested in CR No. 484/2023 registered at Chandwad Police Station for the offences punishable under Sections 363 and 376(2) of Indian Penal Code and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act.
2. Perused application, charge-sheet and documents filed on record.
3. Heard learned Advocate for applicant / accused. He submitted that the applicant / accused is falsely implicated in this crime. The applicant /accused and the victim are husband and wife. They have performed marriage. She is able to understand consequences of her act. Investigation of the crime is completed. Charge-sheet is filed in the Court. The accused is in custody since 06/01/2025. There is no need to keep the accused behind the bars. It will amount to pre-trial detention. The accused is ready to abide conditions of the bail. Therefore, he prayed to allow the application.
4. Heard learned A.P.P. Shri. R.L. Kapse for the State. He vehemently submitted that applicant / accused has committed

serious offence of rape. Prima facie case is made out against the accused. At the time of offence the age of the victim was about 17 years 01 month. She was minor. Her consent is no consent in the eyes of law. There is every possibility that the accused may tamper with the prosecution evidence, if released on bail. Therefore, considering seriousness and gravity of the crime, he prayed to reject the application.

5. Upon hearing the learned Advocate for applicant / accused, learned A.P.P. and on perusal of the documents on record, it appears that the alleged offence is of very serious nature. The prosecution has prima facie proved involvement of applicant / accused in the alleged crime. At the time of commission of crime she was aged about 17 years 01 month. Therefore, prima facie it appears that the accused has committed offence punishable under Section 376(2)(h) of IPC. Punishment of imprisonment for life is provided for the alleged offence punishable under Section 65 of BNS and Section 4 of POCSO Act.

6. From the perusal of charge-sheet, it appears that the accused is aged about 20 years and minor victim is aged over 17 years 01 month. The victim in her statement under Section 164 of Cr.P.C. dated 03/01/2025 has stated she was in love with the accused. The accused was working with her father. Her parents were against their marriage, therefore, they eloped from the house and performed marriage. They had sexual intercourse, therefore, she become pregnant. The victim has filed her say to the application at

Exh.4 wherein she has repeated the contents of her statement under Section 164 of Cr.P.C. She has further stated that her parents are not maintaining her as she performed marriage with the accused against their wish. Accused is the only person to look after and maintain the victim and her child. Therefore, she has no objection to grant bail to the accused. No physical violence can be seen from the perusal of medical reports on record.

7. Learned Advocate for the accused placed her reliance on the decision of Hon'ble Bombay High Court in case of **Sunil Mahadev Patil Vs. State of Maharashtra – BA No. 1036 of 2015 dated 03/08/2015**. Hon'ble Ladyhip of the Bombay High Court has observed that

“ This is a usual case of a boy and girl having an affair and then they eloped and got married. As the girl is minor, the boy is sent behind the prison because of the complaint lodged by the parents of the prosecutrix ”.

“ Under such circumstances, considering the law, facts and discretionary powers vested with the Court, it is difficult for the Court to decide the issue of the regular bail under Section 439 of Cr.P.C. Before dealing with this issue, which is faced often by the Courts, it is necessary to deal with the provisions under Section 375 and 376 of the Indian Penal Code.”

“ In the case of S. Varadarajan though the age of consent though as per law was 18 years, when the girl eloped wit the accused, she was approximately 17 years and 9 months old. The Hon'ble Supreme Court in the case of S. Varadarajan has distinguished Section 361 on the point of taking from the guardian or enticing the girl and the girl herself leaving the house of the parents of her own and accused allowing her to be in his company and has held that it not a case of rape In the case of S. Varadarajan, the matter was finally heard and the accused was convicted. In appeal, the decision of going away with the boy and she understands

the meaning of man-woman relationship and of marriage, then the rigor of offence is reduced. ”

“ It is to be noted that the case of S. Varadrajan was decided I the year 1967 when the women were not enjoying the freedom which today the women have. Albeit the Hon’ble Supreme Court then has taken a pragmatic view and has acquitted Varadarajan. Now we come across such cases everyday. If a girl is minor between the age group of 15 to 18 years and if it can be safely inferred that her consent was obvious, then it is a mitigating circumstances. Some trial Courts dealing with such Bail Applications, especially after Nirbhaya case, started taking a strict approach and the accused are denied the bail only on the ground that the prosecutrix being minor below 18 years, her consent is immaterial, therefore, in the case of rape on such minor, no bail can be granted. This is a matter of concern. ”

“ 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 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 boy 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 a 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. From the perusal of charge-sheet, it is crystal clear that the accused is also of tender age. No violence can be seen with the

victim by the accused in the medical report. The accused has no previous antecedents. Certain conditions can be imposed on the accused to prevent him from tampering with the prosecution evidence and giving threats or intimidation to the victim.

9. Considering all these facts and circumstances on record and considering the observations of Hon'ble Bombay High Court in the case of **Sunil Mahadev Patil Vs. State of Maharashtra – BA No. 1036 of 2015 dated 03/08/2015**. I found that present case is also a case of love affair in between accused and victim. Investigation of the crime is completed, charge-sheet has been filed in the Court, therefore, there is no need to keep the accused behind the bars for indefinite period and therefore, the application deserves to be allowed. In the result, I pass the following order.

ORDER

- 1] Application is allowed as under.
- 2] The applicant / accused **Narayan Vishal Ambekar**, resident of Kheldari, Tal. Chandwad, Dist. Nashik be released on furnishing PR Bond sum of Rs.50,000/- (Rupees fifty thousand only) and one surety of like amount in connection with CR No.484/2023 registered at Chandwad Police Station for the offences punishable under Sections 363 and 376(2) of Indian Penal Code and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act.

- 3] The applicant/accused shall attend the Court scrupulously on every date and shall not tamper with the prosecution witnesses in any way and in any manner, in default his bail is liable to be cancelled.
- 4] The applicant/accused shall not abscond and furnish his address to the police alongwith address proof and mobile number.
- 5] The applicant/accused shall not leave India without the prior permission of the Court.
- 6] Violation of any of the conditions imposed shall amount to cancellation of bail forthwith.

(Dictated and pronounced in open Court.)

(A.V. Gujarathi)
Additional Sessions Judge,
Niphad.

Date : 21/02/2025.