

CNR No.MHPU-1400-0842-2025



State of Maharashtra
Vs.
Avinash Dhaigude and Ors.

ORDER BELOW EXH.10

The applicant/accused **Avinash Jalindar Dhaigude** has filed this application for bail under the provision of **Section 439** of the Code of Criminal Procedure (Here in after, in short, Cr.P.C.) in connection with C.R.No.88/2025 for the offences punishable U/s.376(2)(F), 376(2)(N) and 504 of the Indian Penal Code (here-in-after in short 'I.P.C.') and Section 4, 6, 8 and 12 of Prevention of Children from Sexual Offence Act, (here-in-after in short 'the POCSO Act'), registered at Daund Police Station, Tal.Daund, District Pune.

2] Brief facts of the prosecution case are: -

The informant 'A' (name is not disclosed to withheld identity) has filed report against accused alleging that, in March 2024 at 02:00 pm, when she was alone in her house, the accused /applicant is her neighbor. He has phone called her and asked her to came at his photo studio. Accordingly, the informant/victim gets ready and gone to the photo studio accused Avi Dhaigude. When the victim/informant entered into photo studio, accused Avi closed its shutter and started sexually assaulting her by touching her. He kissed her.

She tried to resist and tried to shout. But, accused Avi put his hand on her mouth and closed it. The accused Avi has removed her clothes , his own clothes and raped her. After committing rape, accused Avi told her that, she should come to meet him as and when he called her. He also threatened that she should not disclose this fact to anyone. Thereafter, as and when accused Avi called the victim/informant, she used to meet him and accused Avi used to commit rape on her.

3] In April 2024 at about 10:00 pm, when she was slept in her house, at about 01:00 am (midnight) she feels that someone is rubbing hand on her body. She woke up and found that, it is her cosine Shubham i.e. accused No. 2. The accused No. 2 has removed his clothes, close her mouth by putting hand and raped her. The accused Shubham has threatened her that; if she discloses this fact to anyone, he will kill her and her sister. Therefore, she has not disclosed the rape committed by both accused to anyone.

4] In June 2024, accused Avi has again called her at his photo studio and committed rape. Thereafter, she missed her period. She was having stomach pain. On 28/01/2025, she feels giddiness. So, her grandfather took her to Mahalaxmi Hospital, Daund. Doctor examined her and told that she is pregnant and referred her to Sasoon Hospital, Pune. Her grandfather and sister took her to Sasoon Hospital, Pune. There she gave birth

to girl child. Her sister and doctor in Sasoon Hospital informed it to police. Thereafter, police came to hospital and recorded her statement.

5] On the basis of her statement, crime vide C.R.No.88/2025 for the offences punishable U/Secs. 376(2)(f), 376(2)(n) of IPC and Section 4, 6, 8 and 12 of the POCSO Act, came to be registered at Daund Police Station, Tal.Daund, Dist.Pune against the accused. Investigation is carried out by concern officer. He has submitted charge-sheet against accused persons.

6] Accused has been arrested on 01/02/2025. On 04/02/2025, he has been remanded to judicial custody. So, he has filed this application for grant of bail.

7] Ld. APP & Investigating officer have filed their reply at Exh.13, contested the application and prayed for it's rejection.

8] The informant/victim along with her sister appeared before Court. She has filed her reply at Exh.26, contested the application and prayed for it's rejection.

9] It is submission of Ld. Advocate for the accused/applicant that, victim has not made any allegation or has filed report against the accused/applicant before she admitted in hospital. She has made allegation of penetrative sexual assault by the accused/applicant upon her twice. Spot of incident is situated near her house. It is crowdly place. Statement of

adjacent shop owner is recorded. They have not made allegation against the accused/applicant. Name of the accused/applicant is not stated by the victim in her statement recorded U/Sec.164 of Cr.P.C. As per DNA report the accused/applicant is not biological father of the child begotten by the victim. The victim is not staying in the village as on today. Investigation is over. The accused/applicant is in jail since February 2025. Now, the victim is not staying in shelter home. So, there is no question of tampering and inducement etc. No purpose of the prosecution would suffice by keeping the accused/applicant behind bar. Therefore, he is entitled to get bail. In support of his submission, he relied upon following citations:-

- 1) **Sunny Bramha Bagadi Vs. State of Maharashtra**, reported in 2019 SCC OnLine Bom 5432,
- 2) **Kuldeep Kumar Vs. State of NCT, reported in 2023 SCC OnLine Del 3588.**

Wherein their Lordship have released accused on bail as victim girl and accused were acquainted with each other and having friendship, love affair, there were telephonic communication between them, DNA report is negative etc.

10] On the other hand, it is submission of APP that, bail application filed by accused No.2 in this case is

rejected by this Court. Anticipatory bail application filed by accused No.3 is also rejected by this Court. There is specific allegation about penetrative sexual assault on victim against the accused/applicant. The victim is below 14 years. The victim has faced multiple penetrative sexual assault by three accused persons. So, the accused/applicant is not entitled to get bail on the ground that DNA report is negative. Accused No.3 is yet not arrested. So, investigation is yet not completed in this case. Accordingly, prayed for rejection.

11] In reply, it is submission of Ld.Advocate for the accused/applicant that, this is not case of common intention. So, application of the accused cannot be rejected on the ground that accused No.3 is yet not arrested.

12] Perused material placed on record. The contents in report filed by the victim shows that, the accused/applicant has committed penetrative sexual assault upon victim girl twice. Admittedly, she is below 14 years age. Admittedly, the accused/applicant is tenant in the shop belongs to family of the victim. So, both of them were well acquainted with each other. The facts and circumstances in this case shows that the accused/applicant has taken disadvantage of teen age of victim girl as well as the fact that both of them know each other well.

13] As pointed out by Ld.Advocate for the

accused/applicant, victim has not stated the name of the accused/applicant in her statement U/Sec/164 of Cr.P.C. But, admittedly, after filing FIR , the family members of the victim have abandoned her. She was staying in shelter home. Thus, she was totally helpless and has lost all her hopes of support. In such circumstances the trauma undergone by her needs to be considered. Thus, non-disclosure of name of the accused/applicant in the statement U/Sec.164 of Cr.P.C. by the victim, in my opinion cannot be considered as ground to release the accused/applicant on bail.

14] As pointed out by Ld.Advocate for the accused/applicant, DNA report shows that the accused/applicant is not biological father of the child begotten by the victim girl. But, contents in FIR and supplementary statement of the victim girl goes to shows that, according to the victim, the accused/ applicant and two other accused persons have committed rape on her. Thus, I am of the view that, negative DNA report is not sufficient to grant bail to the accused/applicant.

15] As pointed by Ld.Advocate for the accused/ applicant, charge is yet not framed by this Court. But, due to pendency of bail applications filed by the accused/applicant as well as accused No.2, charge is yet not framed. The prosecution is ready to conduct the matter as earliest. So, I am of the view that, this is not fit case to release the accused/applicant on bail on the ground that incarceration.

16] Having regard to the above-mentioned facts and circumstances of the case, I am of the opinion that, the accused/applicant is not entitled to get bail. I, therefore, pass following order: -

ORDER

1. The application at Exh.10 is rejected.
2. Inform to concerned Jail Authority, through email.

Baramati.

Date: - 30-10-2025

(S.R.Patil)

Special Judge, Baramati.
(Under POCSO Act)

"CERTIFICATE"

I affirm that the contents of this PDF file are same word for word as per original :-

Name of Steno : **Jagadish Narayan Kanki,**
(Stenographer Grade - I)

Court name : **Surekha R. Patil.**
Addl. Sessions Judge, Baramati

Judgment delivered on : **30/10/2025**

Judgment signed by PO on : **04/11/2025**

Judgment uploaded on : **04/11/2025.**