

Special Pocco Case No.236/2023
1 Karjat C.R.No.239/2023
The State V/s. Sauresh @ Sarvesh Sudhir
Chavan
Exhibit No. 11

MHRG170022492023



ORDER BELOW EXH. 11
IN SPECIAL POCSO CASE NO.236/2023
KARJAT C.R.NO.239/2023
THE STATE -V/S. - SAURESH @ SARVESH SUDHIR CHAVAN
(PASSED ON 14th DAY OF JANUARY, 2025.)

This application is on behalf of the applicant/accused-
Sauresh @ Sarvesh Sudhir Chavan vide Section 483 of the
Bharatiya Nagarik Suraksha Sanhita, 2023 to enlarge him on bail.

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

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

SR. NO.	POINTS	FINDINGS
I.	Whether application for bail is maintainable ?	Yes.

II.	Whether grounds are justified to release the applicant/accused on bail vide Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ?	Yes.
III.	What Order ?	The application is Allowed.

REASONS

4. Perused application, say filed. Heard learned advocate for the applicant/accused Shri. Somnath Patil and learned A.P.P Shri.C.Y.Patil for State.

AS TO POINTS NO. I AND II :

BRIEF FACTS OF PROSECUTION :

5. The informant is the victim. The victim is a member of Scheduled Tribes. The victim was aged 16 years 6 months at the time of first incident. The victim and the applicant have got acquaintance to each other. They developed love relations and later on they have physical relations couple of time continuously since the year 2021 till 12.09.2023. The witness Ganesh Shiva

Waghmare has seen the incident of removing her clothes forcibly by this applicant and rescued the victim from the clutches of accused. The applicant issued life threats to her.

6. On that count, the informant lodged the report Dated 13.09.2023 at Police Station, Karjat. The Police Station officer, Karjat registered Crime No.239/2023 dated 13.09.2023 for the offence under Section 376(2),(j), 376(2)(n), 376(3), 506 of the Indian Penal Code, and Section 4 and 6 of the Protection of Children from Sexual Offences Act and for the offence under section 3(1)(r),(s),(w)(i),(ii),3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against present applicant/accused.

7. The applicant/accused is arrested on 13.09.2023 and produced before the Court on the 13.09.2023. He was remanded to police custody till 16.09.2023 and thereafter he was remanded to judicial custody as per order Dated 16.09.2023. 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, this court issued notice to the informant. The said notice is served to her. The informant failed to appear to the hearing of this bail application.

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

MAINTAINABILITY OF BAIL APPLICATION

11. The charge-sheet against the applicant is filed on 6.11.2023. The first application for bail of this applicant is dismissed by my colleague as per order dated 02.01.2024. Pursuant to that, this applicant filed application for bail before Hon'ble Bombay High Court vide Criminal Bail Application No.215/2024 and the said application was disposed of as per order dated

23.09.2024 with liberty to file fresh bail once the charge is framed. The charge in this matter is framed on 25.11.2024 and then this successive application for bail is filed. In the light of liberty granted by Hon'ble Bombay High Court, this successive application for bail is maintainable. I answer point No.I in the affirmative.

WHETHER GROUNDS OF BAIL ARE MADE OUT ?

12. At the outset, in the light of recitals of FIR, it appears that victim is aged 16 years 6 months at time of first incident in the year 2021. Thus she was a child within the definition of Section 2(d) of the POCSO Act. The victim belongs to the member of Scheduled Tribes. The applicant and the victim got acquaintance to each other and they were in communication to each other. They developed love relations and had physical relations for a longer period since the year 2021 till 12.09.2023.

13. Presently the age of victim is more than 19 years. She has attended age of majority. Even at the time of incident for the aforesaid period, she has sufficient age of understanding. Learned APP submitted that, her marriage is scheduled in the month of May as such she is not coming before the Court. Learned advocate of applicant submitted that, the applicant got married with other girl and after marriage of four months the present crime is registered.

14. The investigation of this crime is over and charge-sheet is filed. The applicant is behind bar since 13.09.2023 as on date for a period of more than one and half year. Looking to the nature of offence coupled with the age of victim and the incident of sexual assault narrated by her as such further detention of applicant behind bar is unwarranted.

15. The applicant has firm roots in the society as such, there is no chance of fleeing from justice. He is ready to furnish the surety and ready to abide conditions imposed by the court. On all these grounds, the 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 below Exh.11 vide Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 on behalf of the applicant/accused – Sauresh @ Sarvesh Sudhir Chavan 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 premises of her residence.
v.	The applicant/accused shall not enter her place of residence and in the said village of her residence till conclusion of trial.
3.	A soft copy of this bail order be forwarded to the applicant/accused through Superintendent, Taloja Jail 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 : Panvel.

**(K.G. Paldewar)
Additional Sessions Judge,
Panvel**

Date : 14.01.2025.

Arguments heard on	13 th Day of January, 2025
Judgment/order delivered on	14 th Day of January, 2025.
Dictated on	14 th Day of January, 2025.
Transcribed on	14 th Day of January, 2025.
Checked and signed on	14 th Day of January, 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 : K. N. Lokhande
Name of the Court : Additional Sessions Court,
Panvel
Date of Judgment/Order : 14.01.2025.
Judgment/Order signed on : 14.01.2025.
Presiding Officer : K.G. Paldewar
Judgment/Order uploaded on : 14.01.2025.