

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE, WARDHA**

**ORDER BELOW EXH.40 (BAIL APPLICATION)**

**IN**

**Spl.Case No.107/2023**

**(CNR. NO. MHWHR01001940-2023)**

**IN**

**[CR NO.: 1156/2023 P.S. Arvi]**

**Ashfak S/o. Akbar Shaha**

Age: 20 Yrs, Occ- labour

R/o: Dhanodi(B), Tah.Arvi

Distt. Wardha.

**.... Applicant/Accused**

**V/s.**

State of Maharashtra

Through its P.S.O.

PS.Arvi, Distt. Wardha.

**... Respondent/State.**

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**Appearance:-**

Mr R.R.Rathi Advocate for applicant/ accused.

Mr. V.R.Ghude Ld.A.PP for Respondent State.  
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**CORAM : S.M.MENJOGE,  
DJ-3 and ASJ, Wardha**

**DATE : 8<sup>th</sup> October, 2025.**

**ORDER**

1. This is an application filed by applicant/accused **Aspafak S/o. Akbar Shaha** for grant of bail U/s. 483 of BNSS in Crime No. **1156/20253** U/s..363, 366(A), 376(2), 323, 506, 34 of I.P.C. and 4, 6 of POCSO Act, and S. 3,(2)(v), 3(2)(va,), 3(1)(w)(i)(ii) of Atrocity Act registered at PS. Arvi, Distt. Wardha.

2. Case of Prosecution, in short, is as under :

Victim lodged report that on 13.10.2023, she had gone to her college at Rohana. As she was not feeling well, she returned to the her village Pargothan by bus. After alighting at Pargothan, she was going to her house by foot. At about 10.45 am, one Scorpio jeep came from back side. One fatty person alighted from the jeep and shut her mouth and forcibly took her inside the jeep. He threatened not to shout otherwise he would kill her and her mother also. Asfak was with said person in the jeep. After reaching to Dhanodi Dam, Asfak ran away. That fatty person made victim to drink liquor and beaten her and committed forcible sexual intercourse with her. As victim lost her conscious , they brought her to Pargothan bus stop and fled away. Based on these allegations, police registered the offence at P.S. Arvi.

3. Advocate for the applicant submitted that accused is innocent and has not committed any offence. Victim has improved her story time to time and name of Asfak is not mentioned in report and her first statement dt. 14.10.2023. Now, the evidence of complainant/victim is recorded in the court. Accused is in jail since 13.10.2023. Hence, he prayed to grant bail.

4. Prosecution has filed its reply and submitted that offence is of serious nature. If he is released on bail at this stage, he may pressurize prosecution witnesses. With these submissions, prosecution prayed for rejection of application.

5. Victim appeared in court. She strongly opposed bail application on the ground that this applicant and another accused Shubham have committed sexual intercourse with her forcibly and if the applicant accused is released on bail, then her life would be in danger..

6. I perused the Chargesheet and heard both sides. I have gone through the Law laid down in respect of grant or refusal of bail, in following cases by the Hon'ble Supreme Court :

- 1] Sanjay Chandra -Vs- C.B.I., 2011 (13) SCALE 107;
- 2] Moti Ram -Vs- State of M.P., (1978) 4 SCC 47;
- 3] Babu Singh -Vs- State of U.P., (1978)1 SCC 579;
- 4] Vaman Narain Ghiya -Vs- State of Rajasthan,(2009) 2 SCC 281;
- 5] Siddharam Mhetre -Vs- State of Maharashtra,(2011) 1 SCC 694;
- 6] VivekKumar-Vs- State of U. P., (2000) 9 SCC 443;
- 7] Prahlad Singh Bhati -Vs- NCT, Delhi, (2001) 4 SCC 280;
- 8] State of U.P -Vs- Amarmani Tripathi, (2005) 8 SCC 21;
- 9] Prahlad Singh Bhati .Vs. NCT, Delhi (2001)4 SCC 280.
- 10] Gurcharan Singh .Vs. State (Delhi Admn.) (1978)1 SCC118.
- 11] Kalyan Chandra Sarkar .Vs. Rajesh Ranjan (2004) 7 SCC 528.
- 12] Ram Govind Upadhyay .Vs. Sudarshan Singh (2002)3 SCC 98.
- 13] Puran .Vs. Rambilas (2001) 6 SCC 338;
- 14] Neeru Yadav .Vs. State of UP,AIR 2015 SC 3703;
- 15] Sharad Kumar.Vs...C.B.I, MANU/DE/2374/2011;
- 17] Bhadresh .Vs. state of Bihar, (2016)1SCC 152;
- 18] Bharat Choudhary .Vs. State of Bihar (2003) 8 SCC 77;
- 19] Munish Bhasin .Vs. State (NCT), (2009)4 SCC 45;
- 20] Niranjana Singh .vs. Prabhakar Kharote, AIR 1980 SC 785;
- 21] State of M.P .Vs. RamKishna Balothia, AIR 1995 SC 1198;
- 22] Pokar Ram .Vs. State of Raj.AIR 1985 SC 969;
- 23] Samunder Singh .Vs. State of Raj. AIR 1987 SC 737;
- 24] Ravindra Saxena .Vs. State of Raj. (2010)1 SCC 684;
- 25] Pravinbhai Patel .Vs. State of Gujarat (2010)7 SCC 598;
- 26] Ram Govind Upadhay .Vs. Sudarshan Singh (2002) 3 SCC 8;
- 27] State of Mah. .Vs. Anand Dighe AIR 1990 SC 625;
- 28] Anil Kumar Tulsyani .Vs. State of U.P (2006)9 SCC 425);

- 29] **Sushila Aggarwal vs State ( NCT) (2020) 5 SCC 1;**  
30] **Arnab Goswami vs State of Mah. (2020) ALL MR( Cri) 4347;**  
31] **Mohammad Zubair vs State of NCT,Cri.W.P279/ 2022 (SC);**  
32] **Satender Kumar Antil vs CBI SLP(Cri) 5191/2021( SC) Dt.11.7.22**

and considered the following factors while deciding this bail application :

- (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) Nature and gravity of the charge;
- (iii) Severity of the punishment in the event of conviction;
- (iv) Danger of the accused absconding or fleeing, if released on bail;
- (v) Character, behaviour, means, position and standing of accused;
- (vi) Likelihood of the offence being repeated;
- (vii) Reasonable apprehension of the witnesses being tampered with and
- (viii) Danger of justice being thwarted by grant of bail.

7. On perusal of charge-sheet, it is found that in report and the statement Dt.14.10.2023, Victim aged 16 yrs had not stated the name of this applicant Ashfak. Then in supplementary statement and statement before Magistrate she stated his name. Evidence of victim is completed on 8.10.2025. She narrated entire facts in her evidence. There is one eye witness Ravindra Baringe, who had seen the victim weeping. Both the accused were seen with victim. Applicant's jeep bearing Reg. No.MH-12-PN-4161 was on the spot i.e dilapidated house. This applicant had filed Cri.Appeal No.318/2024 against rejection of his bail application by this court. Said appeal was also dismissed by Hon'ble High Court on 29.7.2024 and denied the bail to this accused even after filing of chargesheet.

8. Now, again this application is filed by him for grant of bail. Evidence of victim and her mother is recorded but, there is no other change in circumstances. Other eye witnesses are yet to be examined in the court. If the accused is released on bail during the trial, then he may

pressurize other prosecution witnesses. As observed by Hon'ble High Court, there is prima facie case against the applicant.

9. It is not expected to scrutinize evidence minutely in bail order as held by Supreme Court in case of **Kalvakuntla Kavitha .Versus. Directorate of Enforcement, 2024 INSC 632** and **Gudikanti Narsimhulu & Ors. vs. Public Prosecutor, High Court of Andhra Pradesh (1978) 1 SCC 240**. It is also unnecessary to give lengthy reasons at the time of granting bail. Hence, I am not discussing evidence here to avoid prejudice to any party.

10. However, it is necessary to protect minor girl from such offences otherwise object of POCSO Act would be frustrated. In case of **Mayur Raju Wankhede .V/s. The State of Maharashtra & Anr. Bail Application No.879 OF 2025 Hon'ble Justice Amit Borkar, Dtd. July 2, 2025** observed that..

“While considering bail applications in cases involving POCSO Act, Hon'ble High Court is guided by the principles laid down by the Hon'ble Supreme Court in various judgments, including the landmark decision in **Satpal Singh vs.State of Punjab**, wherein it has been held that while bail is the rule and jail is the exception, special consideration must be given to the nature of the offence, the age of the victim, and the potential impact on the victim and society at large. Section 12 of the POCSO Act, under which the applicant has been charged, deals with sexual harassment of a child. These are serious offences that carry stringent punishment and require careful judicial scrutiny while considering bail applications. Sexual offences often involve psychological coercion, fear, and shock. Courts have consistently held that while considering bail in cases involving sexual offences against minors, the traumatic effect on the victim and the possibility of the accused influencing or intimidating the victim or witnesses must be given due consideration. While bail is indeed the rule and jail is the exception, this general principle must be balanced against the special circumstances of each case, particularly when dealing with offences against children. The Supreme Court has repeatedly emphasized that in cases involving sexual offences against minors, courts must exercise extreme

caution while granting bail. High court and Supreme court have observed that while every accused person has a fundamental right to liberty, but, this right is not absolute and must be balanced against the larger interests of justice, public order, and the protection of victims, particularly when the victims are minors. The POCSO Act represents the legislative intent to provide stringent protection to children from sexual offences. Courts, as guardians of justice, have a solemn duty to ensure that this legislative objective is not defeated by a liberal approach to bail in such serious cases. The Court further observes that the trauma suffered by child victims in sexual assault cases is immense and long-lasting. The criminal justice system must be sensitive to their plight and ensure that they are not subjected to further victimization through intimidation or influence by the accused persons”.

11. Considering all above facts on record, I have come to conclusion that applicant accused is not entitled for bail Hence, I pass following order.

**ORDER**

Bail Application at Exh.40 in Spl.Case No.107/2025 stands rejected.

(S.M.Menjoge)  
Spl. Judge (POCSO Act),  
Wardha.

Date: 08.10.2025

Directly typed on : 08.10.2025  
Signed by P.O. on : 08.10.2025

Spl.Case No.107/2023

..7..

Order below Exh. 40

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL  
SIGNED JUDGMENT/ORDER.”

08.10.2025  
UPLOAD DATE AND TIME

VINOD V. KADU (Gr-1)  
NAME OF STENOGRAPHER

Name of the Judge.	S.M. MENJOGE
Date of Pronouncement of ORDER	08.10.2025
ORDER signed by P.O. on	08.10.2025
ORDER uploaded on	08.10.2025