

IN THE COURT OF SESSIONS, YAVATMAL

MHYA010005832026



CBA No.62/2026

Naseem V/s. State

Order Below Exh.01

(Passed on 22nd April, 2026)

This bail application is moved under section 483 of BNSS by accused Naseem Shabbir Khan Pathan in relation to FIR No.637/2025 registered at P.S. Parwa for the offence punishable under sections 107 BNS and Sec. 3(2)(va) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocity) Act and Section 8, 12 of Protection of Children From Sexual Offences Act.

2] The prefatory contention of the applicant/accused is that she was arrested on 15/01/2026 and since then is in custody. Her first bail application bearing CBA No. 20/2026 was rejected vide order dt.03/02/2026 mainly on the ground of investigation being in progress. Thereafter, bail application 194/2026 was moved before Hon'ble High Court. Pending listing, charge-sheet came to be filed. Hence, the application before Hon'ble High Court was withdrawn.

3] Informant/N.A.No.2 lodged report alleging that she had instigated her minor son to commit suicide whereby crime is registered against her. But there is unexplained delay of 11 days in lodging report. There was no instigation by her. She in fact was having good terms with the son. Report against her is only on suspicion. She is not connected with the incident. When marg was registered initially informant/N.A.No.2 had stated about not being aware about the reason of the death of her son. The

accused a Pardanasin lady having no criminal antecedent. Now the investigation is completed there is no need for her physical custody. No prima facie case is made out. She is willing to abide conditions. Hence, application for relief laid *ante*.

4] Say of APP, I.O. informant was called. APP vide his say (Exh.9) has strongly opposed the bail application. It is contended that initial bail application was rejected by the Court. Prima facie case is made out. Facts of the case have been elucidated. Investigation conducted inclusive of statement, panchanama, CDR/SDR, P.M. Report support prosecution case. The accused was well aware of the caste of the victim child. There is possibility of pressuring and threatening. There is also chance of breach of peace law and order. On above grounds rejection is prayed for.

5] I.O. vide say Exh. 10 has opposed the bail on the ground that matter involves person belonging to different religion whereby there is agitation in society. The accused by establishing love affair with minor victim mentally, physically harassed him. Accused on Video call showed poison and threatened that since the victim did not agree to physical relation with her she would commit suicide which frightened him. If she is enlarged on bail she might pressurize witnesses. She might not attend trial.

6] Informant/N.A.No.2 has resisted the application vide her reply Exh.6. She has submitted that the accused had sexually harassed her son and subject him to physical and mental trauma. It is contended that because of above sexual harassment her son committed suicide. It is laid that at the time he

committed suicide the accused was on Video Call with him. It is expressed that WhatsApp and Video Calls show that because of the accused having trapped the victim in her web the minor victim died.

7] The defence counsel submitted that the only reason for rejection of first bail application was pendency of investigation which was now completed. Drawing the attention of the Court to FIR (Sr.No.1 list Exh.4) he pointed out that there was 11 days delay in lodging of it. He continued that when marg was being investigated the informant had expressed ignorance as to reason of him having committed suicide which goes to show that allegation are made against the accused as an after thought only on suspicion. He affirmed that the accused had no criminal antecedent, was a widow who had a daughter dependent upon her. He argued that ingredient of 107 of BNS were not evident. He submitted that trial would take time during which the accused was willing to reside outside. He concluded that section of POCSO Act had been added lateron.

8] APP conveyed message that say may be taken into account for the sake of adjudication.

9] The informant/N.A.No.2 when heard in person reiterated the contention in her say Exh.6. She submitted that the accused should not be released as because of her victim died.

10] Heard all sides. Perused proceeding pending on balance sheet of this Court. How far the principle of "Bail is a rule and Jail is an exception" would apply is a question of fact. While exercising its judicial discretion in considering question of

grant or refusal of bail, besides gravity, the Court must also give regard to the background of facts and concomitant circumstances. The parameters to be taken into account for considering entitlement of bail broadly include, albeit are not restricted to, circumstances under which offence is stated to have been committed, the status of the accused, his likelihood of fleeing from justice, probability of re-occurrence of crime on his part so on and so forth. Thus, matter of grant of bail cannot be considered by applying any inexorable formula.

11] The prosecution contested that initial bail application of the accused had been rejected by the Court whereby present application is not tenable. The said matrix is a matter of record. Even, the defence in application as well as argument admitted that initial bail application was rejected prior to filing of charge-sheet. Thus, it is evident that there is no intentional act of concealing the fact. In any case, rejection of earlier bail application does not *per se* warrant rejection of subsequent application. Hence, I proceed to consider the instant application

12] The prosecution has objected to release of the accused on the ground that prima-facie case is made out and her involvement is apparent from charge-sheet and supporting documents annexed thereto which fortify her complicity. The informant/N.A.no.2 submitted the same. The defence counsel exhorted that section 107 of BNS was not attracted.

13] It is well settled that to attract the provision of 107 of BNS what needs to be shown is that the accused had actually instigated or aided the victim in committing suicide. There has

to be proved direct or indirect incitement to the commission of suicide. It has to be established that the accused had played an active role by an act of instigation or by doing certain acts which facilitated commission of suicide. If the FIR on record is scrutinized it is found that it is alleged that the victim and the accused were in a love affair in furtherance whereof the accused is alleged to have threatened the victim because of which harassment he is said to have committed suicide.

14] To highlight the above mens-rea and active participation so as to establish proximate link between the discord and subsequent suicide rival contentions have been agitated by both sides. It is contended that the accused was on video call with the victim at the time suicide was committed. But above evidence involves question of fact and law which cannot be cogitated upon unless both sides have got opportunity to participate through evidence and cross-examination. Veracity of evidence and whether it is sufficient to bring home the guilt, involvement of the accused is a question of trial. It cannot be deliberated upon in depth at this tier. It has to be taken into account only to the limited extent of whether the prayer for bail can be considered.

15] The prosecution exhorted that the mobile phone of the accused and also the CDR/SDR of the conversation between her and the victim have come to be seized. The defence counteracted that only because of conversation section 107 of BNS or POCSO Act would not be attracted. He exhorted that as per prosecution the accused had not even physically met the victim which fortified defence combat that there was no

intention as ascribed. What is irrefragable from the proceeding before me is that the 'mobile as well as CDR/SDR' have already come to be seized during investigation. Even the medical examination has been conducted. Thus, no further recovery or discovery at the instance of the accused is manifest as being pending. Neither is this the contention in the say (Exh.9 & 10).

16] Prosecution through its say Exh.9 apprehended that the accused on being enlarged might tamper with evidence. In this regard, it is pertinent to note that after registration of offence spot panchanama has been done. Mobile Phone has been seized, inspected. CDR/SDR are collected. Medical examination report, P.M.report are gathered. Statements have been recorded. Thus, the chances of the accused tampering with evidence are found sporadic.

17] Further, in addition to above referred facts and circumstances, the substratum of stage of investigation also needs to be taken into account. Charge-sheet is filed and is pending before this Court itself. With the investigation being completed there is manifest no ground as would require further physical custody of the accused. As has been held by Hon'ble Apex Court in catena of judgments any accused is to be kept in extended detention only when the same is imperative under factual matrix of the case. However, the stage of matter does not make it perspicuous in the instant case.

18] The prosecution further opposed bail on the ground that charge invoked were serious. This was counteracted by defence on the ground that considering role ascribed to the accused none were even attracted. It has been observed by

Hon'ble Apex court in catena of cases that however serious a crime may be the Court needs to take into account that applicant is an accused not a convict. It held that it is postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty. If the above observations are pondered in context of case in hand it is manifest to come to assistance of the accused.

19] The prosecution apprehends possibility of law and order problem since offence involves person belonging to different community. This is counteracted by defence side. Mere apprehension cannot stampede the Court into complacent refusal. This is because the object of bail is to secure the presence of the accused person at trial. It is not expected to be punitive or preventive. In such cases "necessity" is the operative test and bail should not be withheld as a punishment. The accused is shown to have no criminal antecedent. She resides within jurisdiction of this Court. She is a widow having a daughter dependent upon her. She has expressed that she is willing to abide any condition. Nothing has been brought forth by prosecution, informant to hold otherwise. There are elicited no exceptional factors which manifest likelihood of her interfering, polluting, thwarting the process of trial. Apprehension of pressurizing can be addressed by imposing conditions. The application deserves to be countenanced.

20] Before saying omega it is clarified that any observation made herein-above are not to be construed to be reflection on the merits of the case and shall remain confined to disposal of this application alone. Ergo, I ordain as follows.

ORDER

1. The application is allowed.
2. Accused Naseem Shabbir Khan Pathan be released on P.B. of Rs.1,00,000/- (Rs. One Lac Only) with solvent surety in the like amount in relation to FIR No.637/2025 registered at Police Station Parwa, Tq.Ghatanji, Dist.Yavatmal for the offence punishable under sections 107 of BNS, Sec. 3(2)(va) of Atrocities Act (Prevention of Atrocities Act) and Sec. 8, 12 of POCSO on the following terms and conditions:
 - (i) The accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court.
 - ii) The accused to reside outside Kurli, Tq.Ghatanji, Dist. Yavatmal till conclusion of trial. To tender pursis in regard to address details during this period.
 - (iii) She shall attend each and every date before trial Court, failing which it shall be a ground for cancellation of bail.
 - (iv) The accused not to indulge in any illegal activities or in committing the offence of like nature.
 - (v) She shall produce verified copy of her Aadhaar Card, Cell phone number.
 - (vi) The surety shall produce verified copy of his Aadhaar Card, contact details, copy of Bank Pass-Book and other address proof.

(S.R.Sharma)

Date : 22/04/2026

Additional Sessions Judge,
Yavatmal

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