

(2025) 03 BOM CK 0280
In the Bombay High Court
Case No : Bail Application No. 655 Of 2025

Prashant Sakharam Atre

APPELLANT

Vs

State Of Maharashtra And Anr

RESPONDENT

Date of Decision : 20-03-2025

Acts Referred:

Constitution of India, 1950 — Article 21
Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 479, 479(1)
Code of Criminal Procedure, 1973 — Section 167, 436A, 436A(1)
Indian Penal Code, 1860 — Section 354A, 354B
Protection of Children from Sexual Offence Act, 2012 — Section 7, 8, 9(m), 10, 11, 12

Citation : (2025) 03 BOM CK 0280

Hon'ble Judges : Madhav J. Jamdar, J

Bench : Single Bench

Advocate : Tapan Thatte, Vivek N. Arote, Anuja Gotad

Final Decision : Dismissed

Judgement

Madhav J. Jamdar, J

1. Heard Mr. Tapan Thatte, learned Counsel for the Applicant and Ms. Anuja Gotad, learned APP for the State.

2. This is the second Bail Application. The first Bail Application bearing Bail Application No.2450 of 2023 has been allowed to be withdrawn by this Court by Order dated 17th January 2024. By the said Order, the Applicant is granted leave to file a fresh Bail Application, if the trial is not concluded within a period of one year. Pursuant to the said liberty, the present Bail Application is filed.

3. The relevant details are as under :-

1.

C.R. No.

110 of 2023

2.

Date of Registration of F.I.R.

21/03/2023

3.

Name of Police Station

Dighi Police Station, Pimpri Chinchwad, District-Pune

4.

Section/s invoked in F.I.R.

354 (A), 354(B) of the I.P.C., 1860 and u/s 11 and 12 of the Protection of Children from Sexual Offence Act, 2012.

5.

Date of Arrest of Applicant

21/03/2023

6.

Date of filing Charge- sheet

June 2023

4. At the outset, Mr. Thatte, learned Counsel for the Applicant submitted that the Applicant is not seeking bail on merits and he is only seeking benefit under Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"). It is his submission that the Applicant is first time offender and therefore as per first proviso to Section 479, the Applicant is required to be released on bond by the Court as the Applicant has undergone detention for a period up to one-third of the maximum period of imprisonment under the law. He submitted that the Applicant has completed detention for 2 years. The maximum punishment under Section 354A of IPC is one year. He submitted that although the maximum punishment under Section 354-B is 7 years and although charge-sheet is filed under said Section the said offence is not disclosed in the entire charge-sheet. He submitted that as far as the offence under Section 11 and 12 of the Protection of Children from Sexual Offence Act, 2012 ("POCSO Act") the maximum punishment is 3 years and therefore the Applicant is entitled to be released on bail as he has undergone 2 years of imprisonment.

5. It is the submission of Mr. Thatte, learned Counsel for the Applicant that the Applicant is the first time offender and has completed one-third of the maximum punishment for the offence which is disclosed from the chargesheet. He submitted that the second proviso of Section 479 of BNSS giving power to the Court to reject the bail application even if the undertrial has completed one-half

of the imprisonment will not apply to the first proviso and the same will only apply to the Sub-Section 1 of Section 479 of BNSS in view of the clear language of second proviso clearly indicating that the same applies to Sub-Section (1) of Section 479 of BNS. He therefore submitted that as the Applicant has completed 2 years of imprisonment, the Applicant is entitled to be released on bail.

6. On the other hand, Ms. Gotad, learned APP submitted that the offence in question is very serious and heinous as the victim is 8 years and inter alia the offence is under the POCSO Act and therefore the Applicant is not entitled to be released on bail.

7. Before considering rival contentions, it is necessary to set out the prosecution case.

i. It is the case of the prosecution that the victim at the relevant time was studying in 2nd standard. The victim commutes to School by School bus. On 20th March 2023, the victim, aged about 8 years went to the School by School bus and returned at around 2.00 p.m.. When the mother of the victim picked-up the victim from the bus, the victim was crying while getting down from the bus and informed that the present Applicant i.e. the driver of the said school bus had stopped the bus, took the victim aside and sexually assaulted the victim.

ii. The victim in her statement recorded by the police on 21st March 2023 has inter alia stated as follows:-

Thus, it is clear that the offence is very serious. The child aged 8 years has been subjected to sexually assault by the Applicant.

8. Although Mr. Thatte, learned Counsel at the outset submitted that the Applicant is not seeking bail on merits and submitted that the Applicant is only seeking benefit under Section 479 of the BNSS, even for considering the said aspect also the merits are required to be taken into consideration.

9. As per the settled legal position the following parameters are inter alia required to be taken into consideration while considering prayer for grant of bail :

- a) Nature and gravity of circumstances in which offence was committed;
- b) Position and status of accused with reference to the victim and the witnesses;
- c) Likelihood of accused fleeing from justice;
- d) Likelihood of accused tampering with witnesses;
- e) History of the case as well as of its investigation.

It is also a settled legal position that the Court is not required to enter into a detailed analysis of the evidence at the stage of consideration of Bail Application.

10. The Hon'ble Supreme Court in the decision of Ram Govind Upadhyay vs. Sudarshan Singh (2002) 3 SCC 598 has held as follows :

"4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

(Emphasis added)

11. If the above parameters are applied to the present case, the material on record clearly shows the involvement of the Applicant in a very serious and heinous crime where the girl child of 8 years has been subjected to sexual assault. This is the case where the Applicant who was driving the School bus at the relevant time stopped the bus, took the victim aside and sexually assaulted the victim. The victim has narrated about the incident. Statement of other students who were also travelling by the said bus when the incident took place supports the prosecution case.

12. In the incident in question a 8 year girl has been subjected to sexual assault. The Applicant was the bus driver of the School bus. Thus, in fact it was the Applicant's duty to reach the students from School to their residence safely. The conduct of the Applicant of stopping the School bus, taking the victim to the nearby place and sexually assaulting the victim clearly shows prima facie involvement of the Applicant in a very serious, grave and heinous offence. In fact, when the Applicant was sexually assaulting the victim one person had seen the incident and as he prevented the same there was no further sexual assault on the victim. Thus, on the touchstone of the parameters of granting bail namely, nature and gravity of circumstances in which offence was committed and position and status of accused with reference to the victim and the witnesses, no case is made out for grant of bail on merits.

13. The charge-sheet filed in this case is under Section 354-A, 354-B of Indian Penal Code, 1860 ("IPC") and Section 11 and 12 of the POCSO Act. The said

sections read as under :

Indian Penal Code, 1860 :

"354-A. Sexual harassment and punishment for sexual harassment.—(1) A man committing any of the following acts—

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.]

354-B. Assault or use of criminal force to woman with intent to disrobe.—Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine."

The Protection Of Children From Sexual Offences Act, 2012:

"11. Sexual harassment.—A person is said to commit sexual harassment upon a child when such person with sexual intent,—

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation.—Any question which involves “sexual intent” shall be a question of fact.

12. Punishment for sexual harassment.—Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.”

(Emphasis added)

14. In view of the statement of the victim as well as other material produced alongwith the charge-sheet, offences under Sections 7, 8, 9(m) and 10 of the POCSO Act are also relevant and the said Sections are also reproduced hereinbelow:

“7. Sexual assault.- Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

8. Punishment for sexual assault.- Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

9. Aggravated sexual assault.-

(m) whoever commits sexual assault on a child below twelve years;

...

is said to commit aggravated sexual assault.

10. Punishment for aggravated sexual assault.— Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.”

(Emphasis added)

15. In this particular case the material produced alongwith the charge-sheet prima facie shows that the Applicant is involved in the offence of sexual assault on the victim. Prima facie the Applicant with sexual intent established physical contact with the victim which is an offence under Section 7 of POCSO Act. As the victim is child of 8 years i.e. less than 12 years, the sexual assault is aggravated sexual assault in terms of Section 9(m) of the POCSO Act and the same is punishable under Section 10 of the said Act. Thus, although charge-sheet is filed only under Section 354-A, 354-B of IPC and under Section 11 and 12 of the POCSO Act, the offences under Section 7, 8, 9(m) and 10 are also disclosed from

the material produced alongwith the charge-sheet. The learned trial Court will take note of the same at the time of framing of the charge or before the commencement of the trial or at appropriate stage. In any case the said aspect can be taken into consideration while considering the prayer for bail as the nature and gravity of the circumstances in which offence is committed is required to be taken into consideration. Thus, the maximum punishment provided is 7 years. The Applicant has completed 2 years imprisonment. Therefore, the case of the Applicant do not fall under Section 479 of BNSS including the first proviso of Section 479 of BNSS.

16. It is also necessary to consider the contention of Mr. Thatte, learned Counsel for the Applicant that in the case of the first time offender once he completes one-third of the maximum period of imprisonment, then such undertrial prisoner who is a first time offender has to be released on bond/bail in accordance with first proviso to Section 479 (1) of BNSS and in that case the Court has no jurisdiction to reject his bail application.

17. Main emphasis of submission of Mr. Thatte, learned Counsel, is that, the first proviso to Sub-Section (1) of Section 479 provides that, if the undertrial is first time offender then he shall be released on bond if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law. He submits that the second proviso to Sub-Section (1) of Section 479 giving power to the Court of the continuing the detention of such person for a period longer than one-half of the said period and thus in effect the same is applicable to cases covered under Sub-Section (1) of Section 479 and cases covered under the first proviso concerning one-third of the detention are excluded and the second proviso will not apply in such a case.

18. To appreciate said contention, it is necessary to set out Section 479 of BNSS, which reads as under :

"479. Maximum period for which undertrial prisoner can be detained.

(1) Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail:

Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law:

Provided further that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail

bond instead of his bond:

Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.-- In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

(2) Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court.

(3) The Superintendent of jail, where the accused person is detained, on completion of one-half or one-third of the period mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail."

(Emphasis added)

19. The corresponding section of the Code of Criminal Procedure, 1973 ("CrPC") i.e. section 436-A reads as under :

"[436-A. Maximum period for which an undertrial prisoner can be detained.—Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.]"

(Emphasis added)

20. Perusal of both the Sections i.e. Section 436-A of CrPC and Section 479 of BNSS clearly shows that the main change is that following proviso is added between Sub-Section (1) and first proviso to Sub-Section (1) of Section 436-A

"Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law."

21. Thus, what is provided by Section 479 of BNSS is that if the undertrial has completed one-half of the maximum period of imprisonment specified for such offence under that law or in case of first time offender if he has completed one-third of the maximum period of imprisonment specified for such offence under that law then such undertrial prisoner be released on bond or bail. It is also provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period.

22. Before understanding the scope of Section 479 of BNSS and particularly scope of first proviso to Sub-Section (1) of Section 479 of BNSS, it is necessary to set out the statement of objects and reasons behind enactment of Section 436-A CrPC which reads as under :

"There had been instances, where undertrial prisoners were detained in jail for periods beyond the maximum period of imprisonment provided for the alleged offence. As remedial measure Section 436-A has been inserted to provide that where an undertrial prisoner other than the one accused of an offence for which death has been prescribed as one of the punishments, has been under detention for a period extending to one-half of the maximum period of imprisonment provided for the alleged offence, he should be released on his personal bond, with or without sureties. It has also been provided that in no case will an undertrial prisoner be detained beyond the maximum period of imprisonment for which he can be convicted for the alleged offence.""

(Emphasis added)

23. The Supreme Court in the case of Hussainara Khatoon (IV) vs. Hone Secy, State of Bihar (1980) 1 SCC 98, held that the right to speedy trial is a fundamental right of an undertrial prisoner and is a part of right to life guaranteed under Article 21 of the Constitution of India. In fact Section 436A of CrPC as well as Section 479 of BNSS have been enacted to ensure protection of said fundamental right of the undertrial prisoner. Therefore, it has been provided that if the undertrial prisoner has completed one-half of the maximum period of imprisonment or in case of first time offender, if he has completed one-third of the maximum period of imprisonment specified for such offence, then he shall be released on bail.

24. In the case of Vijay Madanlal Chaudhary vs. Union of India (2022) SCC OnLine SC 929, the Supreme Court in the context of the offence under the provisions of the Prevention of Money Laundering Act, 2002 ("PMLA") has discussed the scope of Section 436-A of CrPC in Paragraph Nos.322 of 326 as follows :-

"322. Be that as it may, in our opinion, this provision is comparable with the statutory bail provision or, so to say, the default bail, to be granted in terms of Section 167 of the 1973 Code consequent to failure of the investigating agency to file the charge-sheet within the statutory period and, in the context of the 2002 Act, complaint within the specified period after arrest of the person concerned. In the case of Section 167 of the 1973 Code, an indefeasible right is triggered in favour of the accused the moment the investigating agency commits default in filing the charge-sheet/complaint within the statutory period. The provision in the form of Section 436-A of the 1973 Code, as has now come into being is in recognition of the constitutional right of the accused regarding speedy trial under Article 21 of the Constitution. For, it is a sanguine hope of every accused, who is in custody in particular, that he/she should be tried expeditiously — so as to uphold the tenets of speedy justice. If the trial cannot proceed even after the accused has undergone one-half of the maximum period of imprisonment provided by law, there is no reason to deny him this lesser relief of considering his prayer for release on bail or bond, as the case may be, with appropriate conditions, including to secure his/her presence during the trial.

323. The learned Solicitor General was at pains to persuade us that this view would impact the objectives of the 2002 Act and is in the nature of superimposition of Section 436-A of the 1973 Code over Section 45 of the 2002 Act. He has also expressed concern that the same logic may be invoked in respect of other serious offences, including terrorist offences which would be counterproductive. So be it. We are not impressed by this submission. For, it is the constitutional obligation of the State to ensure that trials are concluded expeditiously and at least within a reasonable time where strict bail provisions apply. If a person is detained for a period extending up to one-half of the maximum period of imprisonment specified by law and is still facing trial, it is nothing short of failure of the State in upholding the constitutional rights of the citizens, including person accused of an offence.

324. Section 436-A of the 1973 Code, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section 436-A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the court, unlike the default bail under Section 167 of the 1973 Code. Under Section 436-A of the 1973 Code, however, the court is required to consider the relief on case-to-case basis. As the proviso therein itself recognises that, in a given case, the detention can be continued by the court even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial.

325. However, that does not mean that the principle enunciated by this Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners [Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, (1994) 6 SCC 731 : 1995 SCC (Cri) 39] , to ameliorate the agony and pain of persons kept in jail for unreasonably long time, even without trial, can be whittled down on such specious plea of the State. If Parliament/legislature provides for stringent provision of no bail, unless the stringent conditions are fulfilled, it is the bounden duty of the State to ensure that such trials get precedence and are concluded within a reasonable time, at least before the accused undergoes detention for a period extending up to one-half of the maximum period of imprisonment specified for the offence concerned by law. [Be it noted, this provision (Section 436-A of the 1973 Code) is not available to the accused who is facing trial for the offences punishable with death sentence.]

326. In our opinion, therefore, Section 436-A needs to be construed as a statutory bail provision and akin to Section 167 of the 1973 Code. Notably, the learned Solicitor General has fairly accepted during the arguments and also restated in the written notes that the mandate of Section 167 of the 1973 Code would apply with full force even to cases falling under Section 3 of the 2002 Act, regarding money laundering offences. On the same logic, we must hold that Section 436-A of the 1973 Code could be invoked by the accused arrested for the offence punishable under the 2002 Act, being a statutory bail."

(Emphasis added)

25. Second proviso of Sub-Section (1) of Section 479 of BNSS clearly provides that the Court may after hearing the learned APP and for the reasons recorded in writing, order the continued detention for a period longer than one-half of the said period. Thus, inspite of completion of one-half of the maximum period of imprisonment the Court has got power to order the continued detention of such person.

26. The submission of Mr. Thatte, is that the second proviso by which power is given to the Court to order the continued detention of the undertrial prisoner inspite of completion of sentence as provided under Section 479(1) will not apply to first time offenders as the second proviso specifically mentions about one-half of the punishment. It is his submission that the said proviso will not apply in case the person is the first time offender.

27. The Supreme Court in the case of Tribhovandas Haribhai Tamboli vs. Gujarat Revenue Tribunal 1991 3 SCC 442 has held in paragraph 6 as follows:

"6. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field, which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. Where the language of

the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect."

Thus, it is clear that a cardinal rule of interpretation is that a proviso to a particular provision of a statute only embraces the field, which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case.

28. The Supreme Court in the case of *S. Sundaram Pillai vs. V. R. Pattabiraman* 1985 1 SCC 591 after discussing law regarding general principles of construction of a proviso and main purport and parameters held in paragraph no.43 as under :

"43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment:

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and 7 (1985) 1 SCC 591.

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

(Emphasis added)

29. The Supreme Court in the case of *S. Sundaram* (supra) in paragraph 22 has held as follows :

"22. Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so-called proviso has substantially altered the main section."

30. Thus, ordinarily the proviso is intended to take out a part of the main section for special treatment. Thus, reading of Sub-Section (1) of Section 479 of BNSS clearly shows that the mainly it provides that if the under trial prisoner has undergone one-half of the maximum period of imprisonment, then he shall be released by the Court on bail. An exception is carved out to said main proviso by providing by first proviso that where such a person is the first-time offender, who has never been convicted, of any offence, he shall be released on bail by the Court if he has undergone detention for a period extending upto one-third of the maximum period of imprisonment. Thus, Section 479(1) is required to be read with the first proviso. The language of second proviso clearly shows that the Court has got power to direct continued detention of such person for a period longer than one-half of the said period. It is very clear that the said second proviso will also apply to the first proviso as what is contemplated by the second proviso is that inspite of the provisions of Sub-Section (1) of Section 479 or first proviso to Sub-Section (1) the Court has power to continue detention of such person. The same depends on several factors including the gravity of offence, nature of accusations, likelihood of accused fleeing from justice, tampering and various other factors. It is very clear the Sub-Section (1) of Section 479 of BNSS is to be read with the first proviso and the same provides the period of imprisonment after completion of which the undertrial is entitled to get benefit of Section 479 of BNSS. In fact the second proviso is to be applicable to Sub-Section (1) of Section 479 including first proviso as the first proviso is integral part of Sub-Section (1) of Section 479 of BNSS.

31. The contention of Mr. Thatte, that second proviso of Sub-Section (1) of Section 479 of BNSS will not apply to the first proviso on the ground that the said second proviso mentions about one-half of the said period is not correct and legal submission. The said one-half period of imprisonment is mentioned in the second proviso as the main section i.e. Section 479(1) provides that if the undertrial prisoner has completed one-half of the maximum period of imprisonment, then he shall be released on bail and the first proviso makes exception in case of first time offender and provides that this one-half period of imprisonment can be one-third of maximum period of imprisonment in case of the first time offender. Thus, it is clear that the power of the Court to order the continued detention of such undertrial prisoner, even if he has completed one-half or one-third of maximum punishment of imprisonment in case of the first offender, is applicable in both the cases.

32. The object behind said provision that the Court has got power to order the continued detention of the under trial prisoner even beyond completion of one-half or one-third of the imprisonment, as the case may be, as the Court has to take into consideration the nature and gravity of circumstances in which offence was committed, the position and status of Accused with reference to the victim and the witnesses, likelihood of accused fleeing from justice, tampering with witnesses and other several factors depending on the facts and circumstances of this case.

33. If the submissions of Mr. Thatte, learned Counsel are accepted, then without reference to the nature and gravity of the circumstances in which the offence was committed, the position and status of accused with reference to the victim and witness, the likelihood of accused tampering with the witness, likelihood of accused fleeing from justice and other several factors depending on the facts and circumstances of this case the under trial prisoner has to be released in all circumstances. However, it is required to be noted that the Court has to continue the detention only in the grave circumstances.

34. It is admitted position that the charge-sheet is filed under Section 354-A and 354-B of IPC and under Sections 11 and 12 of the POCSO Act. As far as Section 354-A of IPC is concerned, the maximum punishment is 3 years and maximum punishment under Section 354-B is 7 years. As far as maximum punishment under Sections 11 and 12 of the POCSO Act, the same is 3 years. As noted hereinabove the material annexed to the charge-sheet prima facie discloses commission of offence under Sections 7, 8, 9(m) and 10 of POCSO Act where the maximum punishment is 7 years. Thus, in any case even if the contention of Mr. Thatte, learned Counsel for the Applicant is accepted as it is, then also the maximum punishment is 7 years and as the Applicant has completed 2 years of the imprisonment, it cannot be said that he has completed one-third of the maximum punishment. However, it is the submission of Mr. Thatte, that to the facts of this case, Section 354-B will not apply. The same cannot be examined at this stage and in any case, for the reasons recorded hereinbelow, the same is not relevant as offence under Sections 7, 8, 9(m) and 10 of the POCSO Act is also disclosed.

35. In the present case, as noted hereinabove, a girl child of 8 years has been subjected to sexual assault by the driver of the School bus, whose duty as the driver of the School bus is to ensure that the victim reaches her house safely.

36. Accordingly, although the Applicant is first time offender, for the reasons recorded hereinabove he is not entitled to be released on bail.

37. For the above reasons the Bail Application is dismissed.

38. As the victim is girl child of 8 years the learned Trial Court is requested to conclude the trial expeditiously.