



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [ABA] NO. 794 OF 2026
WITH
CRIMINAL APPLICATION [ABA] NO. 771 OF 2026.

....

CRIMINAL APPLICATION [ABA] NO. 794 OF 2026.

Kasif Sahabuddin Khan,
Aged about 28 years, Occupation Labour,
resident of Kidwai Ward, Desaiganj,
Taluka Desaiganj, District Gadchiroli.

...

APPLICANT

VERSUS

1.The State of Maharashtra,
[Through Senior Police Inspector,
Police Station, Desaiganj, District
Gadchiroli).

2.Victim in Crime No.485 of 2026
registered as P.S. Desaiganj,
District Gadchiroli.

3.Senior Police Inspector,
Police Station, Vani, District
Yavatmal.

[Respondent no.3 added for the limited
purpose of producing the record of
Crime No.0771/2026 and related papers).

... NON-APPLICANTS.

Shri V.N. Morande, Advocate for the Applicant.
Shri D.V. Chauhan, Senior Advocate and P.P. with Ms S.N. Thakur, A.P.P. for
Non-applicant Nos.1 and 3/State.
Ms S.V. Bhandwalkar, Advocate (Appointed) for Non-applicant No.2/ Victim.

AND

CRIMINAL APPLICATION [ABA] NO. 771 OF 2026.

Ajay Ganesh Ade,
Age 25 years, Occupation Labour,
resident of Sakhrwira, Tahsil Barshitakli,
District Akola, Maharashtra.

... **APPLICANT**

VERSUS

1.The State of Maharashtra,
Through Police Station Officer,
Police Station, Barshitakli,
Tahsil and District Akola.

2.XYZ Crime No.250/2026
Police Station Barshitakli,
District Akola.

... **NON-APPLICANTS.**

Shri D.J. Sharma, Advocate for the Applicant.
Shri D.V. Chauhan, Senior Advocate and P.P. with Ms S.N. Thakur, A.P.P. for
Non-applicant No.1/State.
Ms S.V. Bhandwalkar, Advocate (Appointed) for Non-applicant No.2/ Victim.

CORAM: M.M. NERLIKAR, J.

DATE: OCTOBER 06, 2026.

ORAL COMMON ORDER:

Heard the learned Counsel for the parties.

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2. These applications are filed by two different applicants in two different crimes, seeking anticipatory bail. Since the issue of maintainability of these applications, in view of the bar under Section 482(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS”), has been raised, it would be appropriate to deal with the said issue first.

3. The applicant in Criminal Application No.794/2026 is accused in Crime No.485/2026 registered with Desaiganj Police Station, District Gadchiroli for the offences punishable under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO”) and Sections 64[2][i], 64[2][m] and 65[1] of the Bharatiya Nyaya Sanhita, 2023 (“BNS”). The allegations leveled by the informant – victim is that in June 2026, the accused had messaged her on the Snapchat app thereby confessing his love and asked her to meet him for 5 minutes between 1.30 to 2: 00 am. When she went to meet him, he took her to his car and committed sexual intercourse with her. Thereafter, 2 to 3 weeks later he again insisted on meeting her during night hours and the said act was repeated. The said act was again repeated after few days and he threatened her not to disclose about it or else he will kill her family. On 08.08.2026 since the victim was not feeling well, her mother took her to the

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government hospital, Wadsa and she was advised for hospitalization. Accordingly, victim was admitted in hospital at Gadchiroli where it was revealed that she was 2 months pregnant. She further stated that she had given false information when the police visited the hospital for enquiry as the accused had threatened her of dire consequences. When the relative of the victim insisted the victim to tell the truth thereafter the victim disclosed about the same, hence the report.

4. Similarly, the applicant in Criminal Application No. 771/2026 is an accused in Crime No. 250/2026, registered with Barshi Takli Police Station, District Akola, for the offence punishable under Section 137(2) of the BNS. The Informant, i.e. the father of the victim, lodged a missing report, and during the search, the victim and the applicant herein were traced together. In her statement on 05/03/2026, the victim stated that no sexual assault had been committed by the applicant and that she had been with the applicant on her own. However, later, on 17/04/2026, in her supplementary statement, the victim alleged that the applicant had raped her and also threatened to make her obscene photographs and videos viral.

5. The learned Counsels for the applicants submit that the bar

contained under Section 482(4) of the BNSS is not an absolute bar as the Supreme Court has dealt with similar statutory provisions in the context of other special enactments and has interpreted that it is not an absolute bar. They particularly placed reliance upon Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("Atrocities Act"), which imposes a restriction on the grant of anticipatory bail. Similar restrictions have also been considered in the context of the Terrorist and Disruptive Activities (Prevention) Act, 1987 ("TADA") and the Unlawful Activities (Prevention) Act, 1967 ("UAPA"). They submit that such statutory restrictions cannot be construed as an absolute bar so as to completely exclude the jurisdiction of the Court, and that the Court can examine whether the ingredients attracting the statutory bar are *prima facie* made out or not.

6. It was also submitted that the Supreme Court in catena of cases has held that there must be *prima facie* satisfaction of the allegations against the accused that he has committed the offence under the said Act so as to attract the embargo contained in Section 482(4) of BNSS. While considering the bar under Section 18 of the Atrocities Act which is similar to Section 482(4) of BNSS, the Supreme Court has held that the application for anticipatory bail is maintainable, if the applicant/accused

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demonstrates that no prima facie case under the said Act is made out or where denial of such relief would result in miscarriage of justice or abuse of process. The learned Counsels also placed reliance on the case of **XXX .vrs. State of Kerala – [2023] 1 HCC (Ker) 623**, wherein the Kerala High Court has held that no absolute bar is provided under Section 438[4] of the Code of Criminal Procedure. The exclusionary clause under Section 482(4) of BNSS is attracted only where a prima facie case of commission of the specified offences is disclosed. The existence of such a prima facie case must necessarily be determined by the Court concerned, upon consideration of the facts and circumstances peculiar to each case. They submit that, applicants/accused persons cannot be kept remedy less, and therefore, present applications are maintainable and are required to be decided on merits.

7. On the other hand, the learned Senior Counsel and Public Prosecutor and learned Counsel for the victim vehemently opposed the applications. It is submitted that the intention of the Legislature is clear and therefore, strict interpretation of Section 482[4] is required. Section 438[4] of the Code of Criminal Procedure had been inserted by way of Criminal Law Amendment Bill, 2018, which was further carried in BNSS by way of Section 482(4). A special category has been carved out by the

Legislature in order to protect the victims who are under 16 and 12 years of age. The aim and object for the said amendment thereby carving a special category is necessarily to be taken into consideration. It is further submitted that even in BNS, similar provisions are there i.e. Section 65 to curb the activities of the accused persons, who are committing rape on the victims who are either under the age of 16 years or 12 years. Further Section 70[2] penalizes gang rape on a victim under the age of 18 years. Section 482(4) of BNSS provides a specific embargo on grant of anticipatory bail if the offence is committed either under Section 65 or Section 70(2) of the BNS. Therefore, the High Court or the Supreme Court cannot amend, alter or insert anything which would frustrate the very purport of inserting the said provisions. Reliance is placed on the judgment of Supreme Court in case of **Sushila Aggarwal and others .vrs. State (NCT of Delhi) and another – [2020] 5 SCC 1**, wherein the Supreme Court has held that the Court should not insert or alter anything that will dilute the provisions as it would amount to judicial legislation, and therefore, in order to curb the activities which are mentioned in Sections 65 or 70[2] of the BNS, Legislature has provided Sub-section [4] in Section 482 of BNSS.

8. They further contended that the Supreme Court has time and

again considered the bar on anticipatory bail which is provided under various Statutes, however, ultimately held that in cases where prima facie case against the accused is made out, in that case, the application would not be maintainable. If the Courts starts deviating from the intention of the Legislature, then the very purpose of incorporating such provision would be redundant. It is further submitted that in order to test the prima facie case against the accused, it has to be seen whether the ingredients of the said Section are being satisfied against the accused person and if the ingredients are satisfied, then only the bar would operate. There may be 'N' number of grounds available to the accused, however, for the purpose of grant of anticipatory bail in view of Section 482[4], the Court should refrain from considering any other ground apart from prima facie allegations/satisfaction of ingredients. The applications for anticipatory bail which are barred by Section 482(4) can be entertained only to test the maintainability as to whether a prima facie case is made out or not. Meaning thereby, the grounds of false implication, inconsistent statements or lack of supporting medical evidence, those cannot be considered for grant of anticipatory bail in light of Section 482(4) of BNSS. Considering the intention of the legislature to introduce the Criminal Amendment Act, 2018, strict interpretation to Section 482(4) of BNSS is required to be given.

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9. I have considered the rival submissions. However, before going into the merits of the matter, it is necessary to first determine the issue of maintainability of the applications in the light of Section 482[4] of the BNSS. However, in order to interpret the said Section, it would be useful to reproduce the same herein below.

“482[4] Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under section 65 and sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023.”

10. The purpose of introducing the above section is necessarily to be seen. Section 438[4] of Code of Criminal Procedure, which is pari materia to Section 482[4] of BNSS, was introduced by way of Criminal Law (Amendment) Bill, 2018. The Statement of Object and Reasons of the same are as under :

“Recent incidents of rape and gang rape on women under the age of sixteen years and twelve years have shaken the conscience of the entire Nation. Therefore, the offences of rape and gang rape on women under the age of sixteen years and twelve years required effective deterrence through legal provisions of more stringent punishment. Some of the incidents in recent years have been marked by increased brutality and violence perpetrated on minor girls. This has fueled demands from various sections of the Society to make the penal provisions more stringent and effective, immediate arrest

of the accused and ensure speedy trial in such cases.”

11. Perusal and plain reading of Section 482[4] of the BNSS indicates that Section 482 shall not be applicable to accused persons, if the accusation against him is of having committed an offence under Section 65 or Section 70[2] of the BNS. Therefore, the aforesaid section states that Section 482, which deals with pre-arrest bail, the said remedy would not be available to the accused persons who are accused of having committed offence under Sections 65 or 70[2] of the BNS. The key issue is whether Section 482(4) of the Bharatiya Nyaya Sanhita creates an absolute bar to grant anticipatory bail, thereby making such applications non-maintainable, or whether the application remains maintainable and the Court must only examine if the ingredients of the alleged offence are prima facie made out. In that context, the Court must decide: (i) whether the application fails at the threshold as non-maintainable, or (ii) whether, if the statutory ingredients are not disclosed, the accused can be granted pre-arrest bail. Answering these questions requires interpretation of the relevant provisions.

12. Before interpreting the said provision, Rules of Interpretation needs to be taken into consideration. It is trite law that if the language

used in a provision is unambiguous, in such circumstances, no further interpretation is permissible and it would not be correct on the part of the Courts to provide different interpretation than what could be gathered from the plain and simple reading of the provision. In such circumstances, it would be useful to refer to the judgment of Hon'ble Supreme Court, in the case of **Nasiruddin .vrs. Sita Ram Agarwal – [2003] 2 SCC 577**, wherein in paragraph no.37 it has been held as under :

“37. The Court’s jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression “shall or may” is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.”

Similarly in case of **Satheedevi .vrs. Prasanna and another – [2010] 6 SCR 657**, the Supreme Court in paragraph no.10 has observed as

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under :

“10. Before proceeding further we may notice two well recognized rules of interpretation of statutes. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise – **Kanai Lal Sur .vrs. Parmnidhi Sadhukhan 1958 SCR 360**. The other important rule of interpretation is that the Court cannot rewrite, recast or reframe the legislation because it has no power to do so. The Court cannot add words to a statute or read words which are not therein. Even if there is a defect or an omission in the statute, the Court cannot correct the defect or supply the omission. **Union of India .v. Deoki Nandan Aggarwal 1992 Supp [1] SCC 323, Shyam Kishori Devi .v. Patna Municipal Corporation [1966] 3 SCR 366.**”

13. In my opinion after referring to the aforesaid two judgments, it is crystal clear that Section 482[4] does not need any interpretation, since the language used in the said section is unambiguous. However, it would be necessary to consider Sub-section [4] of Section 482 in the background

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of the fact that the Supreme Court had an occasion to deal with identical provisions from different statutes like Atrocities Act, 1986, TADA and UAPA. Therefore, the core issue for consideration is whether despite statutory bar, pre-arrest bail can still be granted. The Supreme Court while considering Section 18 of the Atrocities Act, wherein the bar is provided, has in **Prathavi Raj Chauhan .vrs. Union of India – [2020] 4 SCC 727**, held that an application for anticipatory bail is maintainable if the applicant demonstrates that no prima facie case under the Act is made out, or where denial of such relief would result into miscarriage of justice or abuse of process. Paragraph nos.7 and 11 of the said judgment are reproduced herein below.

“7. This Court in Vilas Pandurang Pawar and Anr. v. State of Maharashtra and Ors., (2012) 8 SCC 795, has observed thus:

“10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar

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has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.”

“11. Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A(2) shall not apply. We have clarified this aspect while deciding the review petitions.”

14. Again the said observations are re-affirmed by the Supreme Court in case of **Sahajan Sakeria .vrs. State of Kerala – 2024 SCC OnLine SC 2249**. While interpreting Section 438[4], which is identical to Section 482[4] of the BNSS, the Kerala High Court in case of XXX .vrs. State of Kerala [supra], has framed an identical issue *“Does Sub-section [4] of Section 438 of the Code of Criminal Procedure create an absolute bar in granting pre-arrest bail of an accused involved in the offence of rape of a minor girl?”* Accordingly, the issue is answered in paragraph no.23 by recording reasons, which reads as under:

“23. In the wake of the above findings, the question posed at the beginning of this order is answered negatively. I hold that the exclusion of pre-arrest bail provision by Section 438[4] of Cr.P.C. in respect of the offences mentioned therein is not to be read as absolute, where it was discernible to the court that the allegations

are patently false or motivated and no prima facie materials exist warranting the arrest of the accused. The exclusion clause applies only when a prima facie case of commission of offence is made out. This may have to be determined by the Court concerned in the facts and circumstances of each case.”

15. While considering Sections 376[3], 376-AB, 376-DA and 376-DB of the Indian Penal Code for which offences, bar to grant anticipatory bail was provided under Section 438[4] of Code of Criminal Procedure, the Supreme Court in the case of Sushila Aggarwal and others (supra), in paragraph nos.62 and 63 has observed as under :

“62. This court cannot lose sight of the fact that the Law Commission’s 41st and 48th report focused on the need to introduce the provision (for anticipatory bail) as a preventive, or curative measure, to deal with a particular problem, i.e. unwarranted arrests. Sibbia (supra) noticed this fact, and also that significantly, Section 438 is not hedged with any obligation on the court’s power, to impose conditions. That situation remains unchanged: the provision remains unaltered-at least substantially (barring an amendment in 2005 which obliged the issuance of notice to the public prosecutor before issuing any order for anticipatory bail). The 203rd Report of the Law Commission, which reviewed the entire law on the subject and noticed later decisions, such as Salauddin, Adari Narain Das, etc, recommended no change in law on this aspect relating to conditions. In this background, it is important to notice that the only bar, or restriction, imposed by Parliament upon the exercise of the power (to grant anticipatory

bail) is by way of a positive restriction, i.e. in the case where accused are alleged to have committed offences punishable under Section 376(3) or Section 376AB or Section 376DA or Section 376DB of the Indian Penal Code. In other words, Parliament has now denied jurisdiction of the courts (i.e. Court of Session and High Courts) from granting anticipatory bail to those accused of such offences. The amendment (Code of Criminal Procedure Amendment Act, 2018) introduced Section 438(4)) reads as follows:

"(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code."

63. *Clearly, therefore, where the Parliament wished to exclude or restrict the power of courts, under Section 438 of the Code, it did so in categorical terms. Parliament's omission to restrict the right of citizens, accused of other offences from the right to seek anticipatory bail, necessarily leads one to assume that neither a blanket restriction can be read into by this court, nor can inflexible guidelines in the exercise of discretion, be insisted upon- that would amount to judicial legislation."*

Therefore, the Supreme Court has specifically held that if the Parliament enclues or restricts the power of the Courts, then the same cannot be diluted, otherwise it would amount to Judicial Legislation.

16. Upon perusal of the provisions of law and the interpretation given by the Supreme Court and various High Courts, it is clear that the bar would be applicable in those cases only if the prima facie case is made out. This means that if, on examining the facts, the ingredients of the alleged offence are found to be satisfied, then the application for anticipatory bail would not be maintainable. Therefore, it is necessary to see the ingredients of Sections 65 or 70[2] of the BNS, which provisions are reproduced as under :

“65. Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design shall,—
(a) if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth; and
(b) if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.”

“70[2] Where a woman under eighteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and with fine, or with death.”

Section 65 of the BNSS creates special categories of rape offences: if the victim is under 16 years, or under 12 years, stricter punishments apply, including even the death penalty for cases involving victims below 12. Section 70(2) similarly covers gang rape of victims under 18, where all members of the group are held liable if the act is committed in furtherance of common intention. These provisions were introduced to give enhanced protection to minors, reflecting the legislative intent behind the Criminal Law (Amendment) Act, 2018, which responded to brutal incidents of rape and gang rape of young girls.

17. At this stage, it is important to focus on the ingredients of each section. Section 65(1) requires two elements: (i) rape is committed on a woman, and (ii) the woman is under 16 years of age. Section 65(2) also has two elements: (i) rape is committed on a woman, and (ii) the woman is below 12 years of age.

Section 70(2) sets out four ingredients: (i) rape is committed on a woman by one or more persons forming a group, (ii) the woman is under 18 years of age, (iii) the group acts in furtherance of common intention, and (iv) even if one person commits the act, all members of the

group are held responsible.

In addition, Section 63 of the BNSS broadly defines rape and lays down several categories under which the act of the accused can amount to rape.

18. From the above discussion, it is clear that the legislature carved out special categories requiring stronger safeguards. Therefore, when considering anticipatory bail under Section 482, the Court must first examine whether the ingredients of Sections 65 or 70(2) are made out. If they are satisfied, the application for anticipatory bail is barred and cannot be entertained. If they are not satisfied, the application remains maintainable, and bail may be granted. Thus, Section 482(4) does not impose an absolute bar. It only applies when prima facie allegations under Section 65 or Section 70(2) exist. Whether such allegations are made out depends on the facts of each case, and the Court must scrutinize the prima facie case before deciding. The Court is not expected to indulge in critical analysis of material on record. Therefore, a very small window is open for the accused persons to claim anticipatory bail under Section 482 of BNSS. If the Courts starts enlarging the scope by entertaining the applications on merits by examining all the grounds available in ordinary anticipatory bail applications, then the very purpose of introduction of said provision

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would be frustrated and it would destroy the intent of the Legislature. The words “accusation of having committed” appearing in Section 482[4] of BNSS has significance to mean that if the victim claims that someone is guilty of doing something wrong, her claim will have to be accepted as prima facie satisfaction of facts. Therefore, this Court holds that the application for anticipatory bail can be entertained only to the extent to see its maintainability based on prima facie case to the extent of satisfaction of ingredients of Section 65 or Section 70[2] of the BNS.

19. Now, coming to the facts of Criminal Application No. 794/2026, it appears from the First Information Report that the victim is aged 15 years and 5 months. It further appears that, initially, she did not disclose the involvement of the present applicant to the police when they inquired with her at the Government Hospital about the incident. Initially she had involved another person and accordingly offence was registered against the said person at Police Station Wani, District Yavatmal. Thereafter, she disclosed about the incident to her aunt that the present applicant had committed rape on her. Accordingly, the present First Information Report came to be registered at Desaiganj Police Station, District Gadchiroli, wherein she has specifically stated that the present applicant had committed the offence. The learned Counsel for the

applicant submits that, if merely the ingredients of the offence are required to be seen, initially, the victim had implicated some other person and thereafter given a clean chit to the said person and thereafter implicated the present applicant. It is difficult to accept that a person like the applicant would not be falsely implicated considering the previous false implication by the victim of some other person.

20. On the other hand, the learned A.P.P. opposes the said contention, stating that there may be 'N' number of grounds available to the applicant for grant of bail; however, while considering an application for anticipatory bail in view of the statutory bar, what is required to be considered is whether there are prima facie allegations against the applicant. He further submits that the statement under Section 183 of the BNSS was recorded, wherein the victim has specifically stated that it is the present applicant who has committed rape upon her. Therefore, the ingredients of Section 65(1) of the BNS are satisfied.

21. Upon consideration of the submissions of both sides, prima facie upon perusal of the statement under Section 183 of the BNSS would demonstrate that, false allegations were made against some other person at the instance of the applicant as he had threatened her of dire consequences. However, it was the applicant who had committed rape

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upon her on multiple occasions and she has stated that the allegations made against the present applicant are true.

22. Now, coming to the facts of Criminal Application No. 771/2026, it appears from the First Information Report that the victim is aged 14 years and 4 months. It further appears that the F.I.R. lodged by the victim's father was registered at Barshi Takli Police Station, District Akola, for the offence punishable under Section 137(2) of the Bharatiya Nyaya Sanhita, 2023 ("BNS"), wherein he stated that the applicant lured the victim and took her away. Upon perusal of the victim's statement dated 17/04/2026, she disclosed that she was having a love affair with the applicant and that the applicant had her photographs and videos. She further stated that, on 04/03/2026, at around 1:00 a.m., the applicant asked the victim to meet him, otherwise he would make her videos viral. Accordingly, she went with him. Thereafter, he committed sexual assault upon her and asked her not to disclose the incident to anyone, otherwise he would kill her.

23. The learned counsel for the concerned applicant submitted that the victim and applicant were having a love affair and the relationship between them was consensual which is evident from the statement dated 05.03.2026. Subsequently, in her statement dated 17/04/2026, she made

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allegations against the applicant of having committed sexual assault upon her. The material on record, particularly the variation between the two statements of the victim, raises a serious doubt regarding the allegations against the applicant. Per Contra, the learned APP submits that the subsequent statement of the victim specifically discloses that the applicant committed sexual assault upon her and threatened her to kill her if she disclosed the incident to anyone. It is further submitted that the victim has also stated that the applicant instructed her to give a false statement to the police and not to undergo medical examination, which explains the circumstances in which she had initially not disclosed the incident. Further, even if it is presumed that they were having a love affair then also the victim is a minor and therefore her consent is immaterial.

24. Prima facie, it appears that the statement given by the victim on 05/03/2026 was subsequently found to be inconsistent with her statement dated 17/04/2026, wherein she disclosed that the applicant had committed sexual assault upon her, asked her not to disclose the incident to anyone, and threatened to kill her. It further appears from her subsequent statement that the applicant had instructed her to give a statement to the police as directed by him and not to undergo medical examination. At the same time, she has stated that the allegations made

against the present applicant are true as he has committed sexual assault on her under the threat of making her obscene photographs and videos viral.

25. In both these applications, Section 65(1) has been invoked and therefore, the two ingredients which ought to be satisfied are (i) rape is committed on a woman, and (ii) the woman is under 16 years of age. Prima facie the allegations are made out since in Criminal Application No. 794/2026 the victim is of 15 years and 5 months of age and she has alleged rape by the applicant resulting into her pregnancy. Similarly, in Criminal Application No.771 of 2026, the victim is of 14 years and 4 months and she has stated in her statement that under threat of making her obscene photographs and videos viral, the applicant therein has committed rape on her. Therefore, the applications filed by the applicants are not maintainable, and the bar provided under Section 482(4) would operate.

26. Hence, Criminal Applications are accordingly rejected.

27. Fees of the appointed Counsel be determined and paid as per Rules.

JUDGE

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