

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 704 OF 2026

Pintoo Sarju Gautam

.. Applicant

Versus

State of Maharashtra and Anr.

.. Respondents

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- Ms. Indrayanee Pandit a/w. Mr. Satyavrat Joshi, Advocates for Applicant.
- Ms. Shilpa G. Talhar, APP for Respondent No.1 – State.
- Ms. Isha Kakesh Singh a/w. Neel Paralikar, Advocates for Respondent No.2.
- PSI – Medabalmewar, Kothrud Police Station present.

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 08, 2026.

P.C.:

1. Heard Ms. Pandit, learned Advocate for Applicant; Ms. Talhar, learned APP for Respondent No.1 – State and Ms. Singh, learned Advocate for Respondent No.2.

2. This is an Application under Section 439 of the Criminal Procedure Code, 1973 seeking bail in connection with C.R.No.77 of 2022 registered with Kothrud Police Station, District Pune for the offences punishable under Sections 302, 364, 201, 376 and 377 of the Indian Penal Code, 1860 (for short ‘IPC’); Section 92 of the Rights of Persons with Disabilities Act, 2016; Sections 75 and 85 of the Juvenile Justice (Care and Protection of Children) Act, 2025 and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

3. The Applicant, at the time of commission of the offence was a young offender aged 21 years. The victim was 16 year old boy. The victim was deaf and had a hearing disability. Both were neighbours and knew each other well. The material placed on record indicates that there was nothing amiss if the victim accompanied the Applicant on his two-wheeler an Activa scooter and went out with him as they were friends.

4. On the fateful day of the incident, according to prosecution, on 24.03.2012, the victim left with the Applicant on his scooter at about 05:00 p.m.. One of the witnesses, who was a cousin of the victim has recorded statement that he had seen the victim leave with the Applicant on his scooter and going somewhere. Since the victim did not return home on the evening of the same day, a search was launched by his family members. Upon making inquiries with the Applicant, they were informed that both of them had been together after 05:00 p.m. and after that the Applicant had dropped the victim at Mahotba Ground and thereafter the Applicant claimed to have had no knowledge of where the victim had gone.

5. The case of the prosecution is based on the “last seen” theory only wherein the Applicant and the victim were allegedly seen leaving together at 05:00 p.m.. On the same night, information was received about a body having been found dumped in a gunny bag at a nearby

place near Mahotba Ground. The prosecution Advocate and the learned Advocate appearing for Respondent No.2 – victim/First Informant have vehemently submitted that the “last seen” theory coupled with the fact that Applicant and the victim were seen together would ultimately lead to the inevitable conclusion that Applicant was involved in the incident in question and therefore present Application for bail be rejected.

6. As regards the motive ascribed to the crime *qua* the Applicant, neither the prosecution nor the learned Advocate for First Informant has been able to throw any light, save and except to state that Applicant may have taken advantage of the vulnerability of the victim who was disabled and may have committed the crime. Save and except the “last seen” theory, there is no other direct or even circumstantial evidence brought forth by the prosecution. The statements recorded by the prosecution also *prima facie* lend support to the statement of the Applicant which states that after they both left, he had left the victim near Mahotba Ground. This memorandum statement *prima facie* indicates that the body was found near Mahotba Ground where the clothes of the victim were also found concealed and subsequently seized.

7. Undoubtedly, the nature of the offence is very heinous as argued by the learned Advocate for Respondent No.2 – First Informant.

An apprehension is also expressed that if the Applicant is released on bail, there is a possibility that he may tamper with the witnesses and pressurize them.

8. With the able assistance of the learned Advocates at the bar, I have perused the entire material placed on record.

9. The learned Advocate for the Applicant has referred to several decisions of this Court, *inter alia*, stating that there is no overt act other than the “last seen” theory brought forth by the prosecution to establish the direct or indirect involvement of the Applicant due to any motive in the present case. *Prima facie*, in this regard, the prosecution has not brought forth any material and therefore the learned Advocate for the Applicant may be correct. There has to be some material placed on record to lead the Court towards that direction for consideration.

10. Applicant has also referred to and relied upon the decision in the case of ***Rupesh Tukaram Kondhalkar Vs. State of Maharashtra and Anr.*** delivered by this Court on 23.04.2025, reported in ***2025 SCC OnLine Bom 1772*** with regard to the applicability of the DNA report and also the statutory presumption envisaged under Section 29 of the POCSO Act, because the victim in the present case happens to be a minor boy below the age of 18 years. However, apart from the last seen theory, there is nothing incriminating brought on record even

from the Medical Report to show assault.

11. At the cost of repetition, I would state that, apart from the “last seen” theory, there is no material brought forth by the prosecution, save and except to state that since the offence is heinous in nature, bail should be denied. The Applicant being a young offender as noticed hereinabove has already been incarcerated for more than 4 years and 4 months. This itself is a humongous period of incarceration. The trial is yet to commence and the prospect of the trial not being completed or concluded in the near foreseeable future is quite palpable.

12. Even if I am to accept the submissions made by the learned Prosecutor that the trial should be expedited in view of the gravity of the offence, my experience as the Bail Court has shown that the prosecution invariably does not complete the trial within the time bound period decided by the Court and continues to seek extension of time repeatedly. The prosecution cannot be blamed for this delay either because conducting trial before the Trial Court is dependent on several factors and on most occasions the prosecution is completely helpless with regard to the timeline to be complied with within which the trial has to be completed. The presence of witnesses, their examination and cross-examination and the recording of evidence itself constitutes a long process in conducting the trial with several

exigencies.

13. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the accused is likely to appear before the court for trial. There are other broad parameters also like gravity of offence, likelihood of accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents which are required to be considered in such cases.

14. In the case of *Emperor Vs. H.L. Hutchinson*¹, the Allahabad High Court, as far back as in the year 1931 held that power of granting bail conferred on High Court is entirely unfettered by any conditions. It held that legislature has given the High Court and the Court of Session discretion unfettered by any limitation other than that which controls all discretionary powers vested in a Judge, viz. that the discretion must be exercised judiciously. The Court has given primacy to the fact that accused person if granted bail will be in a much better position to defend himself. In this very case, it was delineated that grant of Bail is the Rule and refusal is an exception. This was in the famous Meerut Conspiracy case.

14.1. Justice Mukerji writing for the Bench held as under:-

“9. Speaking for myself, I think it very unwise to make an attempt to lay down any particular rules for the guidance of the

¹ AIR 1931 ALL 356

High Court, having regard to the fact that the legislature itself left the discretion of the Court entirely unfettered. The reason for this action on the part of the legislature is not far to seek. The High Court might be safely trusted in this matter and it goes without saying that it would act in the best interests of justice whether it decides in favour of the prosecution or the defence. The variety of cases that may arise from time to time cannot be safely classified and it will be dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes.

This being my reading of the law, I proceed to see whether this is a case in which the applicants ought to be let out on bail.

On general principles, and on the principles on which sections 496 and 497 (as amended in 1923) are framed, the grant of bail should be the rule and refusal of bail should be the exception. In the case of a bailable offence, the law expressly says that if the accused person applies for bail he shall be released (section 496). Section 497 applies to cases of non-bailable offence and there it is said that the accused person shall be released on bail except where there appears to be a reasonable ground for believing that he has been guilty of a very heinous offence, namely one which may be punished by either death or by transportation for life : section 497(1). Again it is laid down that where, at any stage of the investigation or trial, there are not reasonable grounds for believing that the accused person has committed a non-bailable offence, but there are sufficient grounds for further inquiry into his guilt, the accused shall be released on bail : section 497(2).

*The principle to be deduced from sections 496 and 497 of the Criminal Procedure Code, therefore, is that **grant of bail is the rule and refusal is the exception.** (emphasis underlined) That this must be so is not at all difficult to see. An accused person is presumed under the law to be innocent till his guilt is proved. As a presumably innocent person he is entitled to freedom and every opportunity to look after his own case. It goes without saying that an accused person, if he enjoys freedom, will be in a much better position to look after his case and to properly defend himself than if he were in custody. One of the complaints made by the applicants in this case is that their letters sent from the custody have been opened and inspected and censored, and, therefore, they were not in a position to conduct their defence with the aid of such friends as may be outside the prison. As I have said, it is obvious that a presumably innocent person should have his freedom to enable him to establish his innocence.*

This being the rule, there may, of course, be exceptions. I will not attempt to lay down any cases of exceptions, because these cases before us are not exceptions and I do not want to say anything which will be only in the nature of an obiter dictum."

14.2. Justice Boys writing a concurrent view held as under:-

“As to the object of keeping an accused person in detention during the trial, it has been stated that the object is not punishment; that to keep an accused person under arrest with the object of punishing him on the assumption that he is guilty, even if eventually he is acquitted, is improper. This is most manifest. The only legitimate purposes to be served by keeping a person under trial in detention are to prevent repetition of the offence with which he is charged, where there is apparently danger of such repetition, and to secure his attendance at the trial. The first of these purposes clearly to some extent involves an assumption of the accused's guilt, but the very trial itself is based on a prima facie assumption of the accused's guilt and it is impossible to hold that in some circumstances it is not a proper ground to be considered. The main purpose, however, is manifestly to secure the attendance of the accused.”

15. In the case of *Satender Kumar Antil Vs. Central Bureau of Investigation*², in paragraph Nos.6 to 15 the Supreme Court considered the prevailing situation of prisons in India, definition of trial and bail, principle of presumption of innocence and reiterated the well recognised principle that bail is the rule and jail is the exception in bail jurisprudence on the touchstone of Article 21 of the Constitution of India. Paragraph Nos.6 to 15 of the judgment reads as under:-

“Prevailing situation

6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.

² (2022) 10 SCC 51

Definition of trial

7. The word “trial” is not explained and defined under the Code. An extended meaning has to be given to this word for the purpose of enlargement on bail to include, the stage of investigation and thereafter. Primary considerations would obviously be different between these two stages. In the former stage, an arrest followed by a police custody may be warranted for a thorough investigation, while in the latter what matters substantially is the proceedings before the court in the form of a trial. If we keep the above distinction in mind, the consequence to be drawn is for a more favourable consideration towards enlargement when investigation is completed, of course, among other factors.

8. Similarly, an appeal or revision shall also be construed as a facet of trial when it comes to the consideration of bail on suspension of sentence.

Definition of bail

9. The term “bail” has not been defined in the Code, though is used very often. A bail is nothing but a surety inclusive of a personal bond from the accused. It means the release of an accused person either by the orders of the court or by the police or by the investigating agency.

10. It is a set of pre-trial restrictions imposed on a suspect while enabling any interference in the judicial process. Thus, it is a conditional release on the solemn undertaking by the suspect that he would cooperate both with the investigation and the trial. The word “bail” has been defined in Black's Law Dictionary, 9th Edn., p. 160 as:

“A security such as cash or a bond; esp., security required by a court for the release of a prisoner who must appear in court at a future time.”

11. Wharton's Law Lexicon, 14th Edn., p. 105 defines “bail” as:

“to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance when required, in order that he may be safely protected from prison, to which they have, if they fear his escape, etc. the legal power to deliver him.”

Bail is the rule

12. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India. This Court in *Nikesh Tarachand Shah v. Union of India* [*Nikesh Tarachand Shah v.*

Union of India, (2018) 11 SCC 1 : (2018) 2 SCC (Cri) 302] , held that : (SCC pp. 22-23 & 27, paras 19 & 24)

“19. In Gurbaksh Singh Sibbia v. State of Punjab [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] , the purpose of granting bail is set out with great felicity as follows : (SCC pp. 586-88, paras 27-30)

‘27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra Nath Chakravarti, In re [Nagendra Nath Chakravarti, In re, 1923 SCC OnLine Cal 318 : AIR 1924 Cal 476] , AIR pp. 479-80 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the “Meerut Conspiracy cases” observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [K.N. Joglekar v. Emperor, 1931 SCC OnLine All 60 : AIR 1931 All 504] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard-and-fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson [Emperor v. H.L. Hutchinson, 1931 SCC OnLine All 14 : AIR 1931 All 356] , AIR p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various

sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. Coming nearer home, it was observed by Krishna Iyer, J., in *Gudikanti Narasimhulu v. Public Prosecutor* [*Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240 : 1978 SCC (Cri) 115] that : (SCC p. 242, para 1)

“1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law”. The last four words of Article 21 are the life of that human right.”

29. In *Gurcharan Singh v. State (Delhi Admn.)* [*Gurcharan Singh v. State (Delhi Admn.)*, (1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the Court, that : (SCC p. 129, para 29)

“29. ... There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.”

30. In *American Jurisprudence* (2nd Edn., Vol. 8, p. 806, para 39), it is stated:

“Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.”

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.'

* * *

24. Article 21 is the Ark of the Covenant so far as the Fundamental Rights Chapter of the Constitution is concerned. It deals with nothing less sacrosanct than the rights of life and personal liberty of the citizens of India and other persons. It is the only article in the Fundamental Rights Chapter (along with Article 20) that cannot be suspended even in an emergency [see Article 359(1) of the Constitution]. At present, Article 21 is the repository of a vast number of substantive and procedural rights post *Maneka Gandhi v. Union of India* [*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248].”

13. Further this Court in *Sanjay Chandra v. CBI* [*Sanjay Chandra v. CBI*, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397], has observed that : (SCC p. 52, paras 21-23)

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact

that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.”

Presumption of innocence

14. Innocence of a person accused of an offence is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the court. Thus, it is for that agency to satisfy the court that the arrest made was warranted and enlargement on bail is to be denied.

15. Presumption of innocence has been acknowledged throughout the world. Article 14(2) of the International Covenant on Civil and Political Rights, 1966 and Article 11 of the Universal Declaration of Human Rights, 1948 acknowledge the presumption of innocence, as a cardinal principle of law, until the individual is proven guilty.”

16. Considering Applicant’s age, if he is enlarged on bail Court is hopeful that his family will undoubtedly do their duty to make every effort and attempt to reform and aid the Applicant in leading a reformed life while on bail rather than keep him in prison and expose him to criminal outlook and life in prison. However on the flip side, if a chance is given to the Applicant because of his young age by enlarging him on bail, there is a possibility that he will be remorseful and repent in retrospect. This is a chance required to be taken by the Court because punishment has to be believed to be inflicted for a reformative result rather than being punitive in nature.

17. Undoubtedly the trial will determine the complicity of Applicant in the offence. While considering Bail Application in such facts, Court feels that reform and rehabilitation of the under trial

accused needs to be considered especially when age of the accused person is young so that he gets an opportunity / or is given an opportunity to reform, rehabilitate and earn his livelihood honorably from the perspective of social integration. This is a chance which the Court must take considering the young age of accused person. The age of the Applicant is very young. If the Applicant is incarcerated in prison further, there is every possibility that he might lose faith in the institution and society at large and may tread the path of criminality or would waste his life. Incarceration in prison exposes many youth to abuse as is shown statistically.

18. There are several harms of incarceration which are inflicted disproportionately on the youth. This is the reason why Court feels that any / every semblance of a chance towards a reformatory approach in punishment should be adopted, especially in the case of young offenders. Hence every opportunity or to that extent risk should be constructively taken by the Court in the case of young offenders – accused before committing such accused to further custody and give such accused an opportunity to become a good citizen in the Society. These observations are only in the view of the young age of the Applicant before me and it is only a means to explore an alternative to incarceration so that the Applicant can become a good citizen.

19. In the case of *Amit Agrawal Vs. State of NCT Delhi*³ the Delhi High Court in paragraph No.13 of the said decision has given a quick overview of the principles of bail jurisprudence by the Supreme Court which are necessary for consideration by a bail Court considering the right of speedy trial of an under-trial accused. These principles are enumerated therein as follows:-

“13.1. An undertrial is required to post bail in order to secure his presence at the trial, for which purpose an undertrial is handed-over from the custody of the court to the custody of an appropriate surety. The effect of granting bail is not to set an undertrial completely at liberty but to release him from the custody of law and entrust him to the custody of his surety; and the surety is bound to ensure his production at the trial.

13.2. Bail may be denied if the court is not satisfied that an accused would remain available to face trial; or the court is of the view that he would intimidate witnesses or tamper with evidence or otherwise interfere in the course of justice. The ‘operative’ test that a court must apply for grant or denial of bail is the test of ‘necessity’, namely to answer why it is necessary to detain an undertrial in custody.

13.3. The purpose of pre-trial custody is neither ‘punitive’ nor ‘preventative’, meaning that an accused cannot be held in custody only with the intention of punishing him for an offence which is yet to be proved against him; nor is bail to be denied on the presumption that he would commit an offence if enlarged from custody (except where additional twin conditions prescribed by the Legislature under certain special statutes).

13.4. Pertinently, bail must not be denied as a mark of disapproval of the alleged conduct of an accused; nor should it be denied for giving to an accused the taste of imprisonment as a lesson. This is a common pitfall since oftentimes courts get swayed by the allegations contained in an FIR or a chargesheet and tend to proceed on the textual gravity of the offences alleged, meaning that courts get blinded by the multitude of penal sections foisted against an accused by the prosecution, which builds a textual narrative in the FIR or in the chargesheet. It is important therefore, for a court to look into the specific allegations against a particular accused, and how, if at all, those allegations are supported by the material or evidence available on record.

3 Bail Appln 4475/2024 decided on 01.05.2025

13.5. *It is extremely important to appreciate that the consequences of pre-trial detention are grave : an accused, who is otherwise presumed innocent until proven guilty, is subject to psychological and physical deprivations of jail life; and is even prevented from contributing to the preparation of his defense.*

13.6.

13.7. *It would therefore be sacrilege for a court to disregard the presumption of innocence which enures to the benefit of an accused, while on the other hand failing to ensure speedy trial. The right to speedy trial is the flip-side of the presumption of innocence. It has been held that the right to speedy trial is implicit in the broad-sweep of Article 21 of the Constitution; and a procedure prescribed by law that deprives a person of liberty can only be said to be reasonable, fair and just on the anvil of Article 21 if it also ensures speedy trial.”*

20. It is seen that role of the Judge in a trial assumes a lot of importance. The Trial Judge should enquire with the prosecution as to why they intend to examine the witness if such witness is going to depose the very same thing which such a witness might have deposed earlier. This is in the context of considering the issue of delay in trial for grant of bail. The Supreme Court in the case of ***Tapas Kumar Palit Vs. State of Chhattisgarh***⁴ has held that if an accused is to get a final verdict after incarceration of 6 – 7 years in jail as an under-trial prisoner, then definitely it could be said that his right to have a speedy trial has been infringed. The Supreme Court held that stress of long trial on accused persons who remain innocent until proven guilty can also be significant. The Supreme Court held that accused persons are not financially compensated for what might be a lengthy period of pre-trial incarceration. In the bargain, they may also have lost a job or accommodation, experienced damage to personal relationships while

⁴ Criminal Appeal No.738 of 2025 – Decided on 14.02.2025.

in long incarceration and spent a considerable expense on legal fees. The Supreme Court held that if an accused person is not found guilty, they have likely endured many months of being stigmatized and ostracized and will have to rebuild their lives with their own available resources. The Supreme Court held that delay in trial is bad for the accused and extremely bad for the victims as also for the Indian Society and for the credibility of our justice system which is valued.

21. In the case of *Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Anr*⁵, in the context of delay in trial *vis-a-vis* speedy trial as enshrined in Article 21 of the Constitution of India, the Supreme Court has categorically held that if the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial under Article 21 of the Constitution of India, then the State or prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. The Supreme Court held that Article 21 of the Constitution of India applies irrespective of the nature of the crime. This is a very significant statement.

22. While sitting as a Bail Court what I have experienced is that public prosecutors oppose bail pleas vehemently even in the cases of long incarceration pending trial under the mistaken impression that the crime in question is serious and therefore the Court should not

5 (2024) 9 SCC 813

grant bail to the accused person. This mindset and approach of the prosecution needs to change. It is observed that in cases under POCSO, the statute itself provides a speedy trial within 1 year under Section 35 of the POCSO Act, but that is seldom achieved. Even in such cases where trials are pending over 5 years without even being commenced, the prosecutors raise vehement objection to Bail Applications on the ground of severity of the crime.

23. The Supreme Court in the above case has hastened to add that the accused person is still an under-trial prisoner and not a convict and the overarching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly however stringent the law may be.

24. Attention is invited to Section 309 of Cr.P.C. which reads thus :-

“309. Power to postpone or adjourn proceedings.

(1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded: Provided that when the inquiry or trial relates to an offence under section 376, [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB of the Indian Penal Code, the inquiry or trial shall] [Substituted by Criminal Law (Amendment) Act, 2013] be completed within a period of two months from the date of filing of the charge sheet.]

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone

or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable and may by a warrant remand the accused if in custody :

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time :

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing :

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Provided also that- (a)no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b)the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c)where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.”

25. The above is a statutory provision. In the present BNSS there are similar statutory provisions. They are however seldom followed due to various reasons. Undoubtedly Prosecution cannot be solely blamed for protraction of trial as the reasons for delay are sometimes beyond their control. Hence, I am of the opinion that facet of long incarceration pending trial assumes significance in the realm of Article 21 and Article 22 (2) of the Constitution of India for consideration by every Court deciding a bail Application.

26. Applicant in the present case is a young offender. He is incarcerated for a period of 4 years and 4 months. In that view of the matter, considering the aforesaid *prima facie* observations, findings and judicial pronouncements and the prospect of the trial not being completed or for that matter concluded in the near foreseeable future, I am impelled to consider the case of the Applicant, both on the ground of long incarceration and also on merits which have been *prima facie* discussed hereinabove and accordingly grant bail to the Applicant in the present matter.

27. Hence, Bail Application of Applicant is allowed subject to the following terms and conditions:-

- (i) Applicant – Pintoo Sarju Gautam is directed to be immediately released from prison in connection with CR. No.77 of 2022;
- (ii) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs.25,000/- (Rs. Twenty Five Thousand only) with one or two sureties in the like amount;
- (iii) Applicant shall report to the Investigating Officer at Kothrud Police Station, once every month, on the first Monday of the month between 10:00 a.m. to 12:00 p.m. until commencement of trial and thereafter shall

attend all dates of hearing before the Trial Court;

- (iv) Applicant shall cooperate with the conduct of the trial and remain present before the Trial Court on all dates, unless specifically exempted. Applicant shall not seek unnecessary adjournments. Any such conduct shall entitle the prosecution to apply for cancellation of bail;
- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vii) Applicant shall keep the Investigating Officer informed of their current residential address and mobile telephone number and shall forthwith inform the Investigating Officer of any change in their residential address or mobile telephone number, as and when such change occurs; and
- (viii) Any breach or infraction of any of the aforesaid conditions shall entail cancellation of the bail granted to the Applicant.

28. It is clarified that the observations made in this order are limited for the purpose of granting bail only and I have not made any

observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made hereinabove in this order.

29. This Court appreciates the valuable assistance rendered by both Ms. Pandit, learned Advocate for the Applicant and Ms. Singh, learned Advocate appointed through the Legal Aid to espouse the cause of Respondent No. 2. Ms. Singh's fees be paid by the High Court Legal Aid Services Authority as per rules on production of a server copy of this order and other compliances in accordance with the decision of this Court in the case of *Sanjyot Nitin Telharkar Vs. The State of Maharashtra & Anr.*⁶ and the Schedule under Regulation 18(1) of the Maharashtra State Legal Services Authority Rules, 1998.

30. Bail Application is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

Ajay

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by AJAY
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Date: 2026.09.08
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⁶ Judgment dated 25.09.2024 passed in Misc. Civil Application No. 134 of 2024