

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPLICATION (BAIL) NO.326 OF 2017.

Nakibur Rehman, presently
in judicial custody at
Colvale, Thr. Barkatulla
Sheikh., Applicant.

versus

The Police Inspector,
Incharge Mapusa Police
Station, Mapusa and anr. Respondents.

Shri S. G. Desai, Senior Advocate with Mr. R. Desai, Advocate for
the applicant.

Shri S. R. Rivankar, Public Prosecutor for the respondents.

Coram:-PRITHVIRAJ K. CHAVAN,J.

Reserved on:10th January, 2018.

Pronounced on:- 16th January, 2018.

ORDER:

The applicant has prayed for his release on bail who is facing trial for the offences punishable under Sections 363, 376 of IPC and Section 8 of the Goa Children's Act and Sections 4,8, 12 of POSCO Act for having kidnapped and molested an 8 years old girl on 12.3.2017 between 17.00 to 18.00 hours by taking her secretly to a place.

2. Heard Shri Desai, learned Senior Counsel for the applicant.

At the outset, the learned Senior Counsel would argue that this is a case where there is an infringement of Article 21 of the Constitution of India in the sense that the applicant has been incarcerated sans any incriminating material against him not only in the police record but even in the course of evidence before the President, Children's Court for the State of Goa, where trial is in continuation. It is argued by Shri Desai, that there is delay of 2 to 3 days in lodging the report by the father of the victim which has not been explained by the prosecution. The applicant is a young boy of 19 years age who has been unnecessarily detained, as now the evidence of most of the prosecution witnesses has been recorded and only the Investigating Officer and a few pancha witnesses are to be examined.

3. On the other hand, Shri Rivankar, learned Public Prosecution strongly opposed the release of the applicant by stating that it is very serious and heinous crime and, secondly, the delay of 2 to 3 days is normal in such cases which cannot be viewed otherwise. It is also submitted by the learned Public Prosecutor that there is ample evidence on record indicating involvement of the applicant in the present crime. The applicant was hiding himself for 2 to 3 days after commission of the offence and now a false plea disputing his identity has been raised belatedly by him. It is also submitted by the learned Public Prosecutor that the applicant has not

objected to his identity at the very first opportunity, however, now the said point is raised only to thwart the legal action. He, therefore, stressed for rejection of the application.

4. It appears from the record that the earlier applications for bail were rejected by this Court on 21.2.2017, 16.3.2017, 11.5.2017 and thereafter the learned Special Judge had also rejected the bail application of the applicant by an Order dated 23.11.2017. In the order dated 23.11.2017, the learned President observed that the applicant has raised dispute of identity for the first time in the application, however, the learned Public Prosecutor found that in order dated 22.8.2017 the said claim of his mistaken identity has already been discussed in detail and that aspect has been kept open, in the defence to be proved on merits. It reveals from the record that prosecution has already examined five material witnesses namely the victim, her parents and two medical officers. It is also clear from the order of the President that the victim has duly identified the applicant in the Court as the one who was involved in the alleged act which was found corroboration from the evidence of medical officer PW4 who stated about vaginal penetration.

5. In the light of this material evidence on record and in the light of the fact that trial is at the fag end of its conclusion, no

fruitful purpose would be served in releasing the applicant also for the reason that he has no roots in the State of Goa. My attention has not been drawn by the learned Senior Counsel to any of the documentary evidence on record from which it can be inferred that in case of his release the applicant would not flee away from justice. There is, however, no question of influencing or tampering with the prosecution witnesses as the evidence of the material witnesses appears to have been already recorded by the learned President.

6. As far as the identity of the applicant is concerned, the said issue can be taken care of by the learned President as already stated herein above and the applicant will get full opportunity to establish the said aspect. It appears from the application for bail that the applicant has also raised a plea of alibi which also can be taken care of during the course of trial.

7. The learned Senior Counsel has pressed into service a case law of the Supreme Court reported in **(2012) 1 SCC 40** in the case of **Sanjay Chandra Vs. Central Bureau of Investigation**. The learned Senior Counsel has drawn my attention to Paragraphs 40 to 42 of the said judgment which I reproduced as under:-

“40. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is

regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.

41. *This Court in Gurcharan Singh and Ors. Vs. State (Delhi Admn.), observed that two paramount considerations, while considering petition for grant of bail in non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure of the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.*

42. *When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial,*

the question is : whether the same is possible in the present case."

8. No doubt from the ratio laid down by the Hon'ble Supreme Court in ***Sanjay Chandra***(supra) it is always the discretion of the Court which is to be exercised judiciously for grant or denial of the bail which depends on facts and circumstances of each particular case. Here the matter is at its fag end, and, therefore, there is no question of incarcerations of the applicant unnecessarily or relieving the state of burden of keeping him behind the bars. The Hon'ble Supreme Court has also made observations which are there in the case of ***Gurucharan Singh vs State (Delhi Admn.)*** reported in ***1978 SCC (Criminal) 41*** as to paramount considerations to be observed while considering a petition for grant of bail in a non-bailable offences. It is observed that apart from seriousness of the offence, likelihood of the accused fleeing from justice and he tampering with the prosecution witnesses are to be considered. As already stated there is chance of fleeing from justice and, therefore, ratio can be appropriately applied in the given set of facts. There would be no question of infringement of Article 21 of the Constitution of India, as the trial is being conducted speedily by the learned President who shall make endeavour to conclude the trial as early as possible.

9. In the light of the aforesaid observations, I do not find any substance in the application which deserves to be rejected. The application, therefore, stands rejected.

PRITHVIRAJ K. CHAVAN,J.

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