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

CRIMINAL BAIL APPLICATION NO.729 OF 2018

Parmeshwar Sambhaji Pulawale ...Applicant
Versus
The State of Maharashtra ...Respondent

Ms.Anjali Patil, for the Applicant.

Ms.S.S.Kaushik, A.P.P for the Respondent-State.

Mr.Ravindra A. Tonage, Jailor, Taloja Central Prison, Navi Mumbai.

ASI – Shenvekar, Kalamboli Headquarters, Navi Mumbai.

CORAM : REVATI MOHITE DERE, J.

DATE : 7th AUGUST, 2018

P.C. :

1. Heard learned counsel for the parties.
2. This is the second bail application preferred by the applicant. The first bail application of the applicant was withdrawn after arguing for some time. The same is recorded in the order dated 1st September, 2017 passed in Criminal Bail Application No.1575 of 2017. Vide the said order

dated 1st September, 2017, the trial of the Applicant was expedited and the learned Sessions Judge was directed to conclude the trial as expeditiously as possible and preferably within 9 months from the date of the receipt of the order. The Applicant was also granted liberty to file a fresh application for bail, if, for no fault of the Applicant, the trial did not conclude within the said period. Pursuant to the liberty granted, the present Application has been filed by the Applicant.

3. By this second application, the Applicant seeks his enlargement on bail in connection with C.R.No.I-11 of 2017 registered with the Jawahar Police Station, Thane, for the alleged offences punishable under Sections 354(B), 506 of the Indian Penal Code and Sections 8, 9(f) and 10 of Protection of Children from Sexual Offences Act.

4. Learned Counsel for the applicant submits that pursuant to the liberty granted by this Court vide order dated 1st September, 2017, that the present application has been filed. She submitted that despite the trial being expedited vide order dated 1st September, 2017, till date, only charge has been framed and that there has been no progress in the case. She submitted

that the offence, if any, is punishable with a maximum sentence of 3 years and that the Applicant is in custody for the last 1 ½ years. She further submitted that the Applicant had applied Vicks on the victim girl, aged 15 years as she was suffering from cold.

5. Learned APP opposes the application. She has filed an affidavit of Mr.Arun Patil, Assistant Commissioner of Police, Administration, Kalamboli Head Quarters, Navi Mumbai as well as of Mr.Sadanand Gaikwad, Superintendent, Taloja Central Prison, giving an explanation as to why the Applicant was not produced on the dates given by the trial Court.

6. Perused the papers including the charge-sheet as well as the affidavits filed by the Superintendent of the Taloja Central Jail and the Assistant Commissioner of Police, Administration, Kalamboli Head Quarters, Navi Mumbai. The First Informant is the Principal of a School. He has alleged that during the period from 28th January, 2017 to 30th January, 2017, the victim girl, aged 15 years was not having her meals regularly, due to her monthly menstrual cycle, and was also not attending

her physical training class for the said reason. He has further stated that when the victim girl was being given a bath, a woman caretaker observed some swelling on the victim girl's back, chest and thigh and on enquiry learnt that the Applicant had sexually assaulted her. Pursuant thereto, the First Informant lodged a complaint with the Jawahar Police Station, alleging the aforesaid offences. The victim girl also stated to be deaf and dumb was taken for medical examination. Her medical report shows that there was a tenderness on her breast and 7th, 8th and 9th rib. The applicant was working in the said institute as a Supervisor, since 1995. A perusal of the statement of the victim girl in particular question nos.5, 9, 10 and 11 *prima facie* reveal the complicity of the Applicant. Infact, one of the answers to the question no.11 shows that the Applicant had threatened her not to disclose the said incident to any person. Although the trial was expedited vide order dated 1st September, 2017 and a direction was given to the learned Sessions Judge to conclude the trial as expeditiously as possible and preferably within 9 months from the date of the receipt of the order, the trial has not commenced yet. A perusal of the Roznama shows that charge was framed on 27th October, 2017 and that thereafter for some or the other reason, trial could not proceed as the Applicant was not

produced before the concerned Court or his Advocate was absent. A perusal of the Roznama shows that on several dates, the Applicant-Accused was not produced from Jail, and as such the learned Sessions Judge, could not proceed with the case.

7. On the previous date, this Court vide order dated 30th July, 2018, had directed the Superintendent, Taloja Jail as well as the D.C.P. Police Headquarter, Navi Mumbai to file an affidavit giving an explanation as to why the Applicant was not produced on the dates given by the trial Court, as a result of which the trial could not proceed.

8. Accordingly, Mr.Arun Patil, Assistant Commissioner of Police, Administration, Kalamboli Head Quarters, Navi Mumbai has filed his affidavit giving suggestions and reasons for non-production of the Applicant on the dates given by the trial Court. Similarly, Mr.Sadanand Gaikwad, Superintendent, Taloja Central Prison, has also filed his affidavit dated 6th August, 2018 giving reasons for not producing the Applicant on some of the dates given by the trial Court. The Superintendent, Taloja Central Prison has further requested that guidelines be issued that whenever

cases of under trial prisoners are expedited or made time bound, the office of the concerned Jail be officially intimated about the same, so that there is no lapse on the part of the Jail Authorities in producing the concerned under trial prisoners on the dates given by the trial Court.

9. *Prima facie*, as far as merits are concerned, it appears that the Applicant a Supervisor in the School had misused and abused his position and had sexually assaulted the victim girl, aged 15 years who was deaf and dumb. The said fact is corroborated by the medical certificate of the victim girl. Considering the same, the applicant's application for bail stands rejected.

10. However, considering the maximum sentence that can be imposed in the said case and the fact that the trial of the applicant has already been expedited vide order dated 1st September, 2017, the learned Judge, to conclude the trial as expeditiously as possible and in any event within 4 months from the date of receipt of this order.

11. The right to an expeditious trial, more particularly considering the sentence that may be awarded in the given case has to be adhered to. There can be no justification for non-production of the accused on the dates given by the trial Court, except in exceptional cases as it would defeat an accused's right to an expeditious trial.

12. Both, Mr.Arun Patil, Assistant Commissioner of Police, Administration, Kalamboli Head Quarters, Navi Mumbai as well as Mr.Sadanand Gaikwad, Superintendent, Taloja Central Prison have filed an affidavit and have given an assurance that they will take steps to ensure that the accused will be produced on the dates given by the trial Court.

13. The affidavits filed by Mr.Arun Patil, Assistant Commissioner of Police, Administration, Kalamboli Head Quarters, Navi Mumbai as well as Mr.Sadanand Gaikwad, Superintendent, Taloja Central Prison, that they will take all steps and make all efforts to ensure that the Applicant is produced on the dates given by the trial Court, except in exceptional circumstances, without making any excuses with regard to the non-availability of the staff are accepted.

14. Learned APP to communicate the aforesaid order to the Assistant Commissioner of Police, Administration, Kalamboli Head Quarters, Navi Mumbai as well as Superintendent, Taloja Central Prison, so as to enable them to comply with the aforesaid order.

15. Registry to communicate the above order to the learned Sessions Judge, who is seized of the said case, who shall conclude the case within the stipulated period.

16. It is made clear that the observations made herein are *prima facie* for deciding the aforesaid application, and the learned Judge shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

17. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)