

HIGH COURT OF CHHATTISGARH, BILASPUR

• **MCRC No. 24 of 2021**

- Neeldhuj Dahariya, S/o Late Bisahu Dahariya, Aged About 49 Years R/o Village - Bhaismudi, Police Station Kharora, District : Raipur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through - S.H.O., Police Station Kharora, District : Raipur, Chhattisgarh

---- Respondent

For Applicant	:	Mr. Ravindra Sharma, Advocate.
For State	:	Mr. Pawan Kesharwani, Advocate.
For Complainant	:	Mr. Vaibhav A. Goverdhan, Advocate.

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

11/02/2021

Heard.

1. The first bail application was dismissed as withdrawn with liberty to revive in case trial does not begin and pre-trial detention is more than one year.
2. The applicant has been arrested in connection with Crime No.329/2019 in Special Criminal Case No.26/2020 registered at Police Station-Kharora, District : Raipur, (C.G.) for the alleged commission of offence under Sections 363 & 377 of IPC and Section 6 of POCSO Act.
3. Prosecution case is that the applicant kidnapped the child aged about 11 years and he was taken to remote place and it is alleged that the applicant inserted his male organ in the mouth.
4. Learned counsel for the applicant would submit that the applicant has been falsely implicated and allegations against the applicant are false and fabricated. He would submit that at present, investigation is complete and charge sheet has also been filed but thereafter the trial has not proceeded further and no material progress has taken place in trial not even charges have been framed. He would argue that though the allegations against the

applicant are serious in nature, at the same time, the applicant cannot be kept in pre-trial detention for a long period even without start of the trial. Learned counsel for the applicant would submit that the right of the accused to speedy trial emanates from article 21 of the Constitution of India and he cannot be kept in jail only on serious allegations without there being expeditious trial. Learned counsel for the applicant would submit that in the present case, pre-trial detention has exceeded one year and when charges have not been framed, 13 prosecution witnesses cited in the charge sheet, trial is not likely to be concluded early and therefore, merely because certain serious allegations have been levelled against the applicant, he would be suffering pre-trial detention for a long time.

5. Learned counsel for the applicant would argue that however serious allegations may be, the criminal jurisprudence is well settled that the burden is only on prosecution to prove and therefore only on the ground that the allegations are serious, he cannot be kept in jail awaiting trial for indefinite period. He would highlight that filing of the affidavit by the complainant who happens to be father of the child raising no objection to grant of bail weakens the prosecution allegation and renders probable for the defence that it is in all probability a case of fabrication for ulterior motive.
6. Learned State Counsel would submit that in the present case, allegations against the applicant are of commission of offence of aggravated sexual assault punishable under Section 6 of the POCSO Act because the child-victim is less than 12 years of age and the unnatural act of the applicant apart from being commission of offence under Section 377 IPC, is a heinous offence against the child for which aggravated punishment has been provided under special enactment POCSO Act. According to him, filing of affidavit by the father of the child does not weaken the story of the prosecution but it more shows that the father is in all probability won over. He would submit that though the applicant has remained in jail for about one year, the detention is because of extraordinary circumstances due to pandemic. The trial could not take place but now the Courts have opened on 17.11.2020 and trial is likely to begin and conclude early, therefore, at this stage, bail may not be granted.
7. Learned counsel for the objector/complainant submits that the complainant would have no objection if bail is granted to the present applicant.

8. I have heard learned counsel for the parties. The allegations against the applicant are heinous in nature. The allegation is of commission of offence of aggravated sexual assault on a child aged about 11 years. Such kind of offences have been brought in the net of special enactment of POCSO Act which provide for strict punishment as compared to that it is provided under Section 377 of IPC.
9. Whether due to long pre-trial detention accused is entitled to grant of bail despite being charges of commission of heinous offence.

The pre-trial detention of applicant has exceeded one year and it is also not disputed that charges have not been framed against the applicant. The reason, however, for delay is extraordinary in nature and well known that because of the pandemic, trial could not take place in time. Judicial notice of the fact that Court have started physical functioning with effect from 17.11.2020 can be taken. If the nature of allegation and the punishment prescribed for the alleged commission of offence is juxtaposed with the period of pre-trial detention, in the considered opinion of the Court, the situation has not reached at stage where the pre-trial detention could be treated as the basis for grant of bail by itself despite the nature of allegation and strict punishment provided under the law that is punishment of not less than 10 years.

10. In respect of commission of offence under NDPS Act also, such a situation had arisen for consideration before the Supreme Court in the case of **Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India and ors. (1994) 6 SCC 731** where the accused were alleged to have committed offence under the NDPS Act and there being a bar created under Section 37 (1)(b). As the accused had remained in pre-trial detention for long time, it was argued that as the accused has remained in jail for long period without conclusion of trial, notwithstanding seriousness of allegation, their right of speedy trial has been violated and that alone should be made a basis for grant of bail. The arguments were dealt with by the Supreme Court as below :-

“15.We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in

Section 20 of the TADA Act by the Constitution Bench in *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in *A.R. Antulay v. R.S.Nayak*, (1992) 1 SCC 225, release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters. What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned counsel for the petitioner that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively he contended that such accused persons whose trials have been delayed beyond reasonable time and are likely to be further delayed should be released on bail on such terms as this Court considers appropriate to impose. This suggestion commends to us.”

A broad spectrum of the aforesaid decision was to strike balance between accused right to speedy trial and the nature of accusation and peculiar provisions creating statutory bar against grant of bail without satisfaction. It is relevant to note that under the NDPS Act a minimum of 10 years sentence is prescribed where the accused is found in possession of contravention of commercial quantity. Dealing with that situation, the Supreme Court had observed that in such cases where the accused undergo the longer period of detention then only he would be entitled to grant of bail.

Even though the aforesaid judgment of the Supreme Court is not

directly applicable in the present case as this is a case different from the nature of accusations dealt with in that case, nevertheless, the approach of that case can be appropriately adopted here also. In the present case looking to the nature of allegations and the period of pre-trial detention, in the considered opinion of the Court, situation has not arrived when only on the ground of pre-trial detention, notwithstanding the nature and seriousness of the offence, accused should be benefited with grant of bail. There is yet another reason why at this stage I am not inclined to grant bail. The main reason for delay in trial is that proceedings in trial Court were paralysed due to pandemic situation but the physical functioning has started and therefore it is expected that trial would be expeditiously concluded.

11. In view of the above consideration, the bail application of the applicant at this stage is not found fit for being allowed on the ground of pre-trial detention of one year. This prayer, however, may deserve acceptance where the period of pre-trial detention become far more and that too without it being attributable to the defence. Without stating anything more, the application is rejected at this stage with a direction to the trial Court to expeditiously conclude the trial. It would be open for the applicant to revive his application when the pre-trial detention makes it incumbent for the Court to grant bail only on this ground. In any case, it would be open for the applicant to revive bail application after examination of child witness.
12. It is made clear that any observation of this case has no bearing on the merits of the case and trial Court will decide the case without being influenced by the observation made in this case.
13. The bail application is accordingly rejected.

Sd/-
(Manindra Mohan Shrivastava)
Judge