

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL BAIL APPLICATION NO. 1482 OF 2021**

Laxman Arjun Dongre	]	
Age 42 Years, Occ. Service	]	
R/o. TA-12, Dongare Chawl,	]	
C.D. Barfiwala Road,	]	
Behind Mangal Jyot Building, Andheri (W)	]	
Mumbai – 58.	]	
<u>At present :-</u>		
Taloja Central Prison	]	
U.T. No. MB – 288	]	
Kharghar, Navi Mumbai	]	
Maharashtra – 410 210.	]	... Applicant

V/s.

The State of Maharashtra	]	
At the instance of	]	
Versova Police Station	]	
Vide C.R. No. 35 of 2017	]	... Respondent

Ms.Shabana Syed M. Ali for Applicant.
Ms.Rutuja Ambekar, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.
DATE : 23rd June 2021.
(Through Video Conferencing)

PC. :

This is a successive application for bail under Section 439 of Criminal Procedure Code in C.R. No. 35 of 2017 dated 28th January 2017 with

Varsova Police Station, District Mumbai, for the offence punishable under Section 376, 506 of The Indian Penal Code and Section 12 of The Protection of Children from Sexual Offences Act, 2012 (POCSO Act), now culminated into POCSO Special Case No. 121 of 2017.

By an Order dated 13th December 2017, the earlier Criminal Bail Application No. 2411 of 2017 preferred by the Applicant was dismissed as withdrawn, with liberty to the Applicant to file a fresh application for bail before the Trial Court, if the trial arising out of C.R. No. 35 of 2017, now culminated into POCSO Special Case No. 121 of 2017 does not commence within a period of one year from today.

2. The present bail applicant was sent by the Applicant through Taloja Central Prison. After the present application was listed for hearing, Advocate Ms.Shabana Syed M. Ali, on instructions from the wife of Applicant, appeared in the matter and amended the present application thereby annexing chargesheet to it.

3. Heard Ms.Shabana Syed Ali for the Applicant and Ms.Ambekar, learned A.P.P. for the Respondent-State. Perused chargesheet.

4. It is an admitted fact on record that, the Applicant has been arrested in the present crime on 28th January 2017 and since then, he is behind bars. That after 13th December 2017, i.e. date of rejection of earlier bail application till date, the examination of chief of first informant (mother of

prosecutrix) is only completed and the trial thereafter has not proceeded.

In view of the above, this Court heard the learned counsel for the Applicant and the learned A.P.P. for the Respondent-State.

5. The prosecutrix in the present crime was aged about 11 years of age on the date of lodgment of the crime. With a view to protect her identity and in consonance with the provisions of Section 228(A) of the Indian Penal Code and Section 33(7) of the POCSO Act, the detailed narration of the facts mentioned in the first information report and in the statement of the prosecutrix are hereby avoided.

6. The First Information Report is lodged by the mother of prosecutrix. The prosecutrix was aged about 11 years on the date of lodgment of the crime. The first informant along with prosecutrix and her other two children was residing with the Applicant at the place of commission of offence in live-in-relationship. The Applicant was already married and was having his first wife and children out of the said marriage. The informant has stated that, after the demise of her husband, she started residing with the Applicant. It is the prosecution case that, on 27th January 2017 between 4:00 pm to 4:30 pm, the Applicant committed penetrative sexual assault on the prosecutrix. The prosecutrix informed the said fact to her mother, when she came home after completing her job. When the informant took the prosecutrix in confidence, the prosecutrix told her that, the Applicant has committed the said act on

earlier 5 to 6 occasions. It is also the prosecution case that, at about 4:00 pm on 27th January 2017, a neighbourer lady, Smt.Sunita Shejvadkar knocked the door of the Applicant. However, it was not opened for pretty long time and after 5 to 6 knocks, the prosecutrix opened the door and told her neighbour that her mother/informant had gone to attend her job and her father was sleeping inside. At that time two other witnesses, namely, Smt.Rubina Ladak and Smt.Kirandevi Sharma were standing outside the house of the Applicant. The said witnesses saw that, at about 4:30 pm, the Applicant came out of the house of the informant and went on a motorcycle. In this brief premise, the present crime is registered.

7. Ms.Shabana Syed, learned counsel for the Applicant submitted that, the Applicant is in jail since 28th January 2017 and except conducting the examination-in-chief of the informant, the prosecution has not proceeded. She submitted that, the Applicant is languishing in jail for more than 4 years without trial. That the Applicant has three daughters to maintain from his marriage. That in the absence of Applicant, the financial condition of his wife and children has become precarious and his wife has to work as maid servant at various houses. She submitted that, as per the chargsheet, the prosecution is going to examine 16 witnesses and the trial may take considerable long time. She therefore prayed that, the Applicant may be released on bail.

8. Per contra, Ms.Ambekar, learned A.P.P. for the State opposed the

application and submitted that, in pursuance of Order dated 13th December 2017, charge has already been framed and the trial has commenced. She on instructions submitted that, as of today the prosecution has recorded examination-in-chief of the informant and further trial is going on. She submitted that, the Applicant has committed the alleged act upon a minor girl, who was treating Applicant as her step father and therefore, the Applicant may not be released on bail.

9. Perusal of record indicates that, the alleged offence by the Applicant was committed on 27th January 2017, between 3:00 pm to 4:30 pm. The present crime has been registered on 28th January 2017. The prosecutrix was examined by the Medical Officer, attached to Dr.R.N. Cooper Municipal General Hospital, Mumbai on 28th January 2017. During medical examination, the Medical Officer noticed “Old healed tears in the hymen at 4 o’clock, 2 o’clock, 7 o’clock position. Small 0.5 cm abrasion in the posterior fourchette. No evidence of fresh injury.” In the Medical-Legal Examination Report of Sexual Violence, dated 28th January 2017, in column No.25 of ‘Final Opinion’, it is stated that, “Sexual assault cannot be ruled out. The reports are awaited.” The D.N.A. Examination Report dated 6th December 2018 submitted by Assistant Chemical Analyzer, Forensic Science Laboratory, Mumbai mentions that, “No interpretable DNA profile is obtained from Ex.6 Blood stained cuttings”. It appears that, the said Ex.6 is Blood stained cuttings from the

knicker of the prosecutrix.

10. Ms.Shabana Syed Ali, learned counsel submitted that, the Applicant had went for cohabitation with his first wife and therefore, the informant got enraged and put forth the prosecutrix to falsely implicate Applicant in the present crime.

11. In view of the above facts and after taking into consideration the fact that, there is a substantial delay in the trial and the Applicant is behind bars for more than four and half years, the Applicant can be released on bail.

Hence, following order :-

- (i) Applicant be released on bail in C.R. No. 35 of 2017 dated 28th January 2017 with Varsova Police Station, District Mumbai, now culminated into POCSO Special Case No. 121 of 2017, on his furnishing P.R. bond of Rs.20,000/- with one or two local sureties in the like amount.
- (ii) Applicant is permitted to furnish cash bail of Rs.20,000/- for a period of 16 weeks from the date of uplodging of the present Order on the High Court Website and during the said period of 16 weeks, the Applicant will have to comply with the condition of furnishing local sureties.
- (iii) After his release from jail, Applicant shall not enter the jurisdiction of Mumbai Police Commissionerate and shall keep himself away, except for attending

Varsova Police Station as has been directed herein below.

- (iv) After his release from jail and during the pendency of trial, Applicant shall attend Varsova Police Station, Mumbai on every first Monday of the month between 10:00 am and 12:00 noon and mark his presency.
- (v) Applicant shall also attend all the dates before the Trial Court except precluded for medical reasons.
- (vi) After his actual release from jail, Applicant will furnish the documents of his prospective residence before the Trial Court.
- (vii) If the Applicant acquires mobile-phone, Applicant will furnish the said mobile-phone number before the Trial Court.
- (viii) It is made clear that, except marking his presency at Varsova Police Station, the Applicant shall not enter jurisdiction of Mumbai Police Commissionerate during the pendency of trial.

12. Application is allowed in the aforesaid terms.

13. All the concerned to act on the basis of the authenticated copy of this Order.

[A.S. GADKARI, J.]