

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

CRIMINAL BAIL APPLICATION NO.2208 OF 2021

Vishal Sunil Udamle @ Jungli ...Applicant
Versus
The State of Maharashtra & Anr. ...Respondents

Mr. Milan Desai i/b T. R. Patel for the Applicant

Ms. P. P. Shinde, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 17th SEPTEMBER 2021

P.C. :

1 Heard learned counsel for the parties.

2 This is the second bail application preferred by the applicant seeking his release on bail under Section 436A of the Code of Criminal Procedure, on the premise that the applicant has undergone more than 50% of the sentence that may ultimately be awarded, in the event, the applicant is convicted for the said offence.

3 The first bail application of the applicant was rejected on merits by this Court (Coram : Revati Mohite Dere, J.) vide order dated 14th January 2021. The said order is at page 50 of the application.

4 The applicant, by this second application, is seeking his enlargement on bail in connection with C.R. No. 472/2018 registered with the Borivali Police Station, Mumbai, for the alleged offences punishable under Sections 354, 506(2), 427 of the Indian Penal Code; Section 8 of the Protection of Children from Sexual Offences Act; Sections 4, 27 of the Indian Arms Act and Sections 37(1)(A), 135 of the Maharashtra Police Act.

5 Learned counsel for the applicant submits that the present application is filed under Section 436-A, having regard to the fact that the applicant has undergone more than 50% of the sentence that may ultimately be awarded, in the event, the applicant is convicted for the said offence. He submits that the applicant was arrested on 4th November 2018 and is in custody since then. He submits that Section 436-A is mandatory, *dehors* the merits of the case and as such, the applicant be released on bail forthwith, having undergone 50% of the sentence.

6 Learned A.P.P opposes the application. She submits that the prosecution, till date, has examined two witnesses i.e. the prosecutrix and her mother and that the prosecution intends to examine 3 more witnesses. She submits that the applicant has 13 antecedents, 3 committed when he was a juvenile accused and the rest, after attaining majority. She submits that having regard to the aforesaid, the applicant is not entitled to be released on bail. She further submits that the trial is proceeding practically, on day-to-day basis, in the trial Court.

7 Perused the papers. The applicant's first bail application was rejected on merits. The said order is on page 50 of the application. The said order is a detailed order, setting out the reasons for rejecting the bail application. Learned counsel for the applicant submits that Section 436A is mandatory and that if the applicant has undergone half of the maximum period of imprisonment specified for that offence under the law, it is mandatory that the applicant be released on bail. The said argument is misconceived, inasmuch as, a perusal of the proviso to the said Section shows that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period.

8 The prosecution has examined the prosecutrix and her mother. The prosecution intends to examine 3 more witnesses. The reasons for rejecting the application on merits is set out in detail, in the order dated 14th January 2021. Having regard to the nature of allegations, if the applicant is enlarged on bail, the possibility of the applicant intimidating or threatening the witnesses cannot be ruled out. Apart from the aforesaid, the applicant has 13 antecedents, 4 of which are committed, when he was a juvenile and the rest after attaining majority.

9 Considering the aforesaid, it is not a fit case to enlarge the applicant on bail. Application is accordingly dismissed.

10 However, since the trial has commenced and having regard to the fact that the applicant has already undergone half the sentence for the offence with which he is charged, it would be appropriate to direct the learned Judge to conduct the case on day-to-day basis and conclude the case as expeditiously as possible and in any event, within 2 months from the date of receipt of this order.

11 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in

accordance with law, uninfluenced by the observations made in this order. The prosecution assures to keep all its witnesses present on the dates given by the trial Court. Statement accepted. The applicant to also co-operate in the expeditious disposal of his trial.

12 Registry to forthwith communicate this order to the learned Judge who is seized with the Sessions Case No. 22/2019.

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

REVATI MOHITE DERE, J.