

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

909 BAIL APPLICATION NO.341 OF 2023

SAGAR BABASAHEB SURYAWANSHI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Rameshwar Totla i/b Mr. Yadav
Ganesh S.

APP for Respondent-State : Mr. S. P. Sonpawale.
Advocate for Respondent No.2 : Mr. Joshi Sarang P -
Appointed.

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CORAM : S. G. MEHARE, J.
DATE : 03.05.2023

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel appointed for respondent No.2.

2. The applicant is seeking bail in Crime No.31 of 2020, registered with M.I.D.C. Police Station, District Latur, for the offences punishable under Sections 376(2)(f), 376(2)(n), 506, 376(3), 354(A) of the IPC and Sections 6, 8 and 12 of the POCSO Act.

3. This is a third successive bail application of the applicant after rejecting his two bail applications on merits by this Court.

4. Learned counsel for the applicant had tried to point out that the material before the Court was not considered when the earlier bail applications were rejected. He has also argued that since the earlier bail applications were withdrawn, those were not decided on merits. This argument seems not legal. It is the practice followed in the High Court that when the Court is not inclined to pass the order favourable to the applicant/petitioner, the Court expresses the view and asks the accused whether he wants the order or wishes to withdraw. Thereafter, on instructions, the learned counsel appearing for the accused states that instead of observing anything against the accused, they may be permitted to withdraw the application.

5. Passing the orders after withdrawal, on instructions, is the rejection of bail on merits after considering the complete material on record before the High Court. In view of such a practice, the applicant cannot come to the Court again and say that the material which was available to him and placed before the Court was not considered. The submission of the learned counsel for the applicant that there were contradictory statements of the witnesses, and those were not considered the

relevant material to point out such contradiction was available with the accused. He had a right to point out everything before the Court, but if he did not point out the same to the Court, how can he point out in successive bail applications as the change in circumstance? It is assumed that the Court has considered each document and evidence while rejecting the application. Therefore, the attempt of the learned counsel for the applicant that the Court should go through the material again was futile. Indirectly the applicant is seeking a review of the earlier order, and the criminal law does not allow the review. On this count also, the arguments would not stand.

6. Learned counsel for the applicant has raised the point that Section 35 of the POCSO Act has been violated. The Court shall, in any event, complete the trial within one year from the date of taking cognizance of the offence.

7. It has been provided in the said Section that if there is a delay in recording the deposition of the child within 30 days by the Special Court, the Court shall record the reasons for the delay. Section 35(2) provides that completing the trial within a year is not mandatory and is a directive provision. It has also been provided that the Court shall complete the trial as far as

possible. Reading the said Section, it cannot be said that, in any event, the trial of POCSO case shall be completed within a year of taking cognizance of the offence. In the light of said provision, the Court did not find substance in the arguments advanced by the learned counsel for the applicant.

8. Learned counsel for the applicant has relied on the case of *Faizan Wahid Baig Vs. The State of Maharashtra, Bail Application No.3372 of 2021*, dated 15.11.2022 (modified as per order dated 24.11.2022 of Bombay High Court). It was an order of bail on merit, so it would not help the applicant.

9. The learned counsel for the applicant has raised the next ground that there was an inordinate delay on the part of the prosecution in not completing the trial.

10. The progress report from the trial court has been called. The learned counsel for the applicant did not deny that around seven months were spent during the Covid-2019 pandemic. The copies of Roznama were placed on record. The report of the trial court reveals that the applicant was moving applications one after another. The application for a narco test of the victim, her parents and the Investigating Officer was rejected. Most of the time, the accused was not produced from

the jail. The charges were framed on 18.09.2020, and the witness summonses were issued on 14.10.2020. Thereafter, the case was listed for the return of witness summons on 28.10.2020. However, the accused had moved an application through the Jail Authority to take cognizance of his application (Narco Test). It was filed after the witness summons were issued. Naturally, the Court was to decide the application, if any, moved by either side. Hence, the stage of proceeding was changed. The report reveals that the applicant was time and again filing applications for bail or changing the lawyer. The report also reveals that on 19.09.2022 and 16.12.2022, the accused was produced on V. C. at that time, the accused stated that his advocate would conduct his case or he would change the advocate and request for adjournment. On that day, his counsel did not appear; the matter is pending since then.

11. The learned counsel for the applicant argued that in the order dated 20.10.2022, this Court has observed that the learned counsel for the applicant, on instructions, sought leave to withdraw the application. However, the lawyer had no instructions to withdraw as the accused was in jail. Hence ground No.17 was raised that reads thus;

“The said application was withdrawn by the erstwhile advocate without any instructions from the applicant. At the relevant time, the applicant was in jail and no instructions as regards withdrawal of the said bail application were sought by the erstwhile advocate.”

12. Raising such a ground expresses doubt over the counsel appearing for the accused. It seems to be a serious matter. It appears that the earlier lawyer has been directly blamed without any material. The Court is of the view that the lawyer accepting bail application should guide and advise the litigant properly before raising such grounds. Otherwise, it may create chaos in the fraternity of legal practitioners. Unfortunately, that care appears to have not been taken.

13. The law is settled that languishing the accused in jail without any reason is ground to grant bail. But, such reason should not be exploited by the accused. The delay must be genuine. When the witnesses were called to lead the evidence, the applicant moved an application for a Narco test. It appears that instead of facing the trial, the conduct of the applicant seems that he was focusing only on bail. The Court must take care that no one should exploit the law. The report reveals that

the matter was ready, but the accused and his counsel were not cooperating with the Court.

14. Considering these peculiar circumstances, it cannot be said that the trial was delayed at the hands of the prosecution. It is also experienced that in most cases, the accused and their counsels do not support the Court to conduct the trial through V.C. They insist on the physical production of the accused in the Court. Every time, the Government cannot produce the accused physically in the Court. This seems to be non-cooperation for quick disposal of the trial. The report of the trial court reveals that the matter may be disposed of in the near future, provided the accused supports the Court. In the interest of justice, the learned trial court is directed to conclude the trial within five months from the date of receipt of this order by keeping the case day-to-day subject to the cooperation of the accused. The Court shall strictly maintain the roznamas henceforth.

15. With the above directions, the bail application stands dismissed.

16. The Secretary, High Court Legal Services, Sub-Committee, Aurangabad, do pay the legal fees to advocate Joshi appointed for respondent No.2, as per the schedule.

(S. G. MEHARE, J.)

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