

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

BAIL APPLICATION NO.1033 OF 2023

**RAHUL S/O SHANKARRAO WADHAVE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Applicant in person through Jail
APP for Respondent No.1/State : Mr. K. S. Patil
Advocate for Respondent No.2 : Mr. Menezes Joslyn A.

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CORAM : S. G. MEHARE, J.

DATE : 10.08.2023

PER COURT :

1. Heard the applicant in person through video conferencing, the learned A.PP for respondent No.1/State, and the learned counsel for respondent No.2/victim.

2. The applicant has filed this successive bail application for bail in crime No.461 of 2021 registered with the Cantonment Police station, Aurangabad City, for the offences punishable under Sections 354, 323, 506 of the Indian Penal Code and Section 9(M)(N), 10, 12 of the Protection of Children From Sexual Offences Act.

3. It seems from the arguments of the applicant in person that he has a grievance that the applications filed before the Sessions Courts were not decided in time, and since they were pending, the trial could not be progressed. It is admitted that after his rejection of the first bail application by this Court, he challenged the order in a Criminal Writ Petition. His Criminal Writ Petition under Section 482 of the Code of Criminal Procedure was decided on 29th March 2023. In the said order, this Court has specifically observed that from the conduct of the petitioner, it appears that he is trying to prolong the matter. His argument further reveals that he wanted to produce some evidence that is lying to him, like the material from his mobile handset. He would argue that he is not a hardened criminal. He wanted to conduct the case in person. He wanted to study the case laws to put his case. He also argued that there are also civil disputes pending against him. However, since he is behind bars, those are also proceeded *ex-parte*. Only the mother resides in his house, and she cannot look after the matters. He has been acquitted once before as offences were not proved against him; hence, if liberty is granted to him, he would be able to contest his matter correctly.

4. He has referred to the matter lodged by her daughter against him and tried to point out that she had given some admissions. He relied on the case of *Dalip Singh Versus State of Uttar Pradesh and Others, Civil Appeal No. 5239 of 2002*. It is a single-page order in Civil Appeal No. 5239 of 2022. It appears not relevant to the facts before the Court.

5. He further relied on the case of *Rekha Murarka Versus The State of West Bengal and Another, 2020 (AIR) (SC) 100*. It is on the point that the victim's counsel should ordinarily not be given the right to make oral arguments or examine and cross-examine witnesses. The victim's counsel has a limited right to assist the prosecution, which may extend to suggesting questions to the Court or the prosecution but not putting them by himself. It was a case under Sections 302 and 326 of the Indian Penal Code. Such is not the issue in this case. He further relied on the case of *Arnesh Kumar Versus State of Bihar and Another Criminal Appeal No. 1277 of 2014 (Special Leave Petition) (CRL) No. 9127 of 2013*, dated 2nd July 2014, in which it has been opined that the police officer shall not arrest the accused unnecessarily and Magistrate do not authorize detention casually and mechanically. The following was the observation of the Hon'ble Supreme Court by way of directions:

“ All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the Indian Penal Code is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr. P.C. All police officers be provided with a check list containing specified sub-caluses under Section 41(1)(b)(ii); The police office shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention; The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing.

Notice of appearance in terms of Section 41A of Cr.P.C be served on the accused within two weeks fro the date of institutions of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing

Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to

be punished for contempt of Court to be instituted before High Court having territorial jurisdiction.

Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court. We hasten to add that the directions aforesaid shall not only apply to the case under Section 498-A of the Indian Penal Code or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years' whether with or without fine. ”

6. Further, he relied upon the case of ***Lalita Kumari Versus Government of Uttar Pradesh and Others in Writ Petition (Criminal) No. 68 of 2008.***

7. He further relied on the case of ***Sanjay Chandra, Vindo Goenka, Gautam Doshi, Hari Nair, Surendra Pipara Versus Central Bureau of Investigation, CBI LAW(SC)-2011-11-37*** in which the ratio has been laid down that the law in regard to grant of refusal of bail is very well settled. It has been observed in paragraph No.11 as follows:-

“ 11. In his reply, Shri. Jethmalani would submit that as the presumption of innocence is the privilege of every accused, there is also a presumption that the Appellants would not

tamper with the witnesses if they are enlarged on bail, especially in the facts of the case, where the Appellants have cooperated with the investigation. In recapitulating his submissions, the learned senior counsel contended that there are two principles for the grant of bail- firstly, if there is no prima facie case, and secondly, even if there is a prima facie case, if there is no reasonable apprehension of tampering with the witnesses or evidence or absconding from the trial, the accused are entitled to grant of bail pending trial. He would submit that since both the conditions are satisfied in this case, the Appellants should be granted bail.

8. The above observations show that reasonable apprehension of tampering with the witnesses or apprehension of the threat to the complainant is a good ground to refuse the bail.

9. He also relied on the case of **Rahul Katara Versus State of Rajasthan S. B. Criminal Miscellaneous Bail Application No. 20783 of 2021 dated 16.03.2022** in which it has been observed that grant or refusal to grant bail lies with the discretion of the Court. Grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case.

10. He also relied on the **Satender Kumar Antil Versus Central Bureau of Investigation and Another Miscellaneous Application**

No. 1848 of 2021 in Special Leave Petition (Cri) No. 5191 of 2021.

In paragraph No. 73, certain directions have been issued, which read thus:-

“73. In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the Courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments :

- (a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.
- (b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 411 and 41A of the Code and the directions issued by this Court in Arnesh Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the Court followed by appropriate action.
- (c) The Courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail.
- (d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed under Section 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition © No.7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing

Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.

- e) There need not be any insistence of a bail application while considering the application under Section 88, 170, 204 and 209 of the Code.
- f) There needs to be a strict compliance of the mandate laid down in the judgment of this Court in Siddharth (supra).
- g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special Courts. The High Court in consultation with the State Government will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special Courts will have to be filled up expeditiously.
- h) The High Courts are directed to undertake the exercise of finding out the under trial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code facilitating the release.
- i) While insisting upon sureties, the mandate of Section 440 of the Code has to be kept in mind.
- j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in Bhi Singh (supra), followed by appropriate orders.

k) Bail application ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

11. He relied on the case of *Rakesh Kaushik Versus B.L. Vig, Superintendent, Central Jail, New Delhi and another 1981 AIR (Supreme Court) 1767*. It pertains to the complaint of the jail authority.

12. The learned A.PP and the learned counsel for the respondent No.2/ victim would submit that the applicant is interested in protracting the trial. The Roznama of the trial Court dated 1st December 2021 shows that the charge was framed against the accused on that day. On that day, he had filed 14 different types of applications, complaining against the jail authority, asking for CCTV footage, permitting him to take out the data from his mobile handset in front of police on his production in the Court, directing the prosecution to file an affidavit about the chits filed in the case, directing the police to produce the record of complaints lodged against him, calling for the explanation of the police for making investigation without obtaining the identity card of the victim. Directing the headmaster of the school

of the victim to produce her signatures. Directing the child to produce the record of his meeting with the victim. Directing the police about his handcuffing as per direction issued in the case of *Citizen for Democracy through its President Versus State of Assam and Others.* Sending him to the civil hospital for gums ache. Directing the jail authority to read Jail Manual and take action for Contempt against A.S.I. Bhosale for giving him inhuman treatment.

13. Further, the Roznama has been referred to point out that the applicant was continuously filing the applications one after another. The prosecution was ready with the case in 2012 itself, but it could not progress as, time and again, the accused demanded something new on every date. On his complaint, his trial was transferred from the two judicial officers. His tendency to file the applications in person along with the documents and the compilation is self sufficient to believe that he has thoroughly prepared with the matter. Even he had requested the trial Court to allow him to use the library of the Court. He was allowed to go to the computer section to search the case laws. The conduct of the applicant in entirety indicates that he wanted to be released on bail anyhow. The documents he had filed in another proceeding are not concerned with the case. He has a habit of filing various proceedings before the Court. He himself is not interested in

getting the matter decided at the earliest. Hence, he cannot claim that the trial Court did not strictly follow the provisions of POCSO Act about deciding the cases in a prescribed time.h The prosecution is ready even today to open the case and complete it at the earliest. The conduct of the applicant reveals that he wanted to put the daughter/victim under pressure. His daughter, who is the victim, has made wild allegations against him. Her statement under Section 164 of the Code of Criminal Procedure is very specific. There was no change in the circumstances. The case laws relied upon by him are totally irrelevant. He has already faced one trial. However, he has been acquitted in that case, and his confidence has been increased that he may conduct the trial as per his choice. Overall conduct of the applicant, he is not entitled to bail. Unless the change in circumstances is pointed out, the successive bail application cannot be considered. They prayed to dismiss the application.

14. The Court had provided him with a video conferencing facility to argue the case in person. Ample time was granted to him to go through the papers which he had relied upon and filed by the victim. There appears substance in the submissions of the learned A.PP and the learned counsel for the victim that the applicant is well prepared. Only he is behind bars may not be a good ground to claim the bail.

Considering his preparations, he cannot be granted bail for preparing more on the law and facts. The roznama reveals that he is a person who is filing the applications and insisting the Court decide those applications first. His conduct appears that he does not trust the Judicial Officers and system. At his instance, his sessions case was transferred twice from the Courts of two judicial officers, and he is still not satisfied with the system. He appears not ready to cooperate with the trial and is only interested in getting bail. As far as the legal expertise is concern, if he desires, the practicing lawyer from the District Legal Services Authority may be provided to him to assist on the law points. But his denial reveals that he would not support the prosecution. The daughter of the applicant has made wild allegations against him. His submissions reveal that the possibility of tampering with the evidence cannot be ruled out, which is one of the grounds for refusing bail. A single man is putting the entire system on his toe to fulfil his desire to come out of jail. He is greater than the law. The safety of his wife, the complainant and his daughter, the victim, shall be given paramount consideration, and they shall not be under pressure or threat to lead the evidence before Court. From the record and the conduct of the applicant, this Court has already observed that he is trying to protract the trial. The record placed before the Court

also reveals that neither the prosecution nor the Court ever denied him to proceed with the matter, but he seems to be interested in filing applications one after another. That apart, there was no change in circumstances. Hence, the application cannot be entertained.

15. For the above reasons, the application stands dismissed.

(S. G. MEHARE)
JUDGE

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