

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 425 OF 2023

Rahul s/o Vijay Bharti, Aged
about 35 years, Talegaon (Shamji
Pant), Tq. Ashti, Distt. Wardha
(Presently at District prison Wardha)

... PETITIONER

VERSUS

1. The State of Maharashtra,
Through Police Station Officer,
P.S. Talegaon (Shamji Pant),
Distt. Wardha.

... RESPONDENT

Shri R.M. Daga, Advocate for the petitioner.
Shri Thakare, A.P.P for the respondent/State.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
DATED : 21/06/2023.

ORAL JUDGMENT (PER : VINAY JOSHI, J.) :

RULE. Rule made returnable forthwith.

2. Heard finally by consent of both learned Counsel
appearing for the parties.

3. This matter gave a rise to an unusual situation where the Supreme Court has directed the Trial Court to release the accused on bail whilst the Trial Court has declined to release the accused on bail.

4. The facts in brief are that the petitioner/accused was facing trial for the offence punishable under Section 376(2)(n), 506 of the Indian Penal Code and Section 6 of the Protection of Children From Sexual Offences Act, 2012 (the POCSO Act). The petitioner/accused obviously remained unsuccessful in the Trial Court as well as this Court in securing bail that is why he has filed the petition bearing Special Leave to Appeal (Crl.) No.2127 of 2023 before the Supreme Court for grant of bail. In said appeal, it is expressed that the prosecution has to examine all material witnesses within two months, however under any circumstances, the petitioner shall be released on bail after lapse of two months. For ready reference, the said part of the order of the Supreme Court is reproduced as below :

“....

Hence, we make it clear that the prosecution shall make all efforts to examine the prosecutrix on 24.04.2023 and any other material witnesses immediately thereafter and that process of examining material witnesses be completed within a period of two months. Further, we make it clear that under any circumstance, the petitioner shall be released on bail after the lapse of two

months, on appropriate bail conditions being imposed by the Trial Court. Needless to mention that the petitioner shall diligently participate in the proceedings so that the prosecution shall complete the evidence as indicated above.”

5. The said order was passed on 19.04.2023 i.e. the period of two months has lapsed on 18.06.2023. Thereafter, the petitioner has applied to the Trial Court for bail on 19.06.2023. Surprisingly, the learned Trial Judge though aware about the orders of the Supreme Court, has still refused to grant bail by stating that the petitioner does not deserve for bail. The Supreme Court though directed to the prosecution to complete the evidence of all material witnesses within two months, however emphasized that in all circumstances, the accused shall be released on bail after two months. It appears from the impugned order of the Trial Court itself that all material witnesses have already been examined. In the circumstance to our mind, there would be no other interpretation at all. Apparently, the learned Trial Judge has misread the order of the Supreme Court, which he ought not to have been, since the matter pertains to personal liberty. In the wake of order of the Supreme Court after lapse of two months, the Trial Court was to simply pass the order of bail by imposing appropriate conditions in his discretion. The discretion left with the Trial Court was to the extent of

imposing bail condition and nothing more than that.

6. In the circumstance, the order of the Trial Court does not sustain nor in the tune of the directions issued the Supreme Court therefore, we hereby passed the following order :

- (a) The petition is allowed.
- (b) The impugned order of rejection of bail dated 20.06.2023, is hereby quashed and set aside
- (c) The Trial Court is directed to pass a fresh order of bail imposing appropriate conditions, on the application of bail, which was already filed on 19.06.2023.
- (d) The said order shall be passed immediately after production of the copy of this order.

7. Authenticated copy of this order be supplied to the parties to act upon.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

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