



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

922 BAIL APPLICATION NO. 1394 OF 2024

TOFIK MITTHU PATHAN

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Shaikh Joyeb I.

APP for Respondent- State : Mr.S.P. Sonpawale

Advocate for Respondent no.2 : Mr. Muthal Mahesh L.

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CORAM : S. G. MEHARE, J.

DATE : 3rd October, 2024.

P.C.:

1. Heard the learned counsel for the applicant, learned APP for the respondent/State and the learned counsel for the informant.
2. The applicant seeks bail by this successive bail application in Crime No.372 of 2023 registered with Kopargaon City Police Station Kopargaon, for the offences punishable under sections 363, 366, 376 read with 34 of the Indian Penal Code and sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act.
3. Earlier bail application was decided on merits. Now the applicant is seeking bail on two grounds, first is that he had a love affair with the victim girl and secondly, since the day of his incarceration, the trial is not progressed.
4. The learned counsel for the victim has filed the affidavit in reply of the father of the victim.
5. This Court called a progress report from the concerned Judicial

Officer. The jurisdiction was lying with Kopergaon Court. However, that session division was again divided and the Court of Additional Sessions Judge was opened at Rahata. So many cases including this were transferred to Rahata Court. The learned Judicial Officer was focusing on the directions of the High Court and the Hon'ble Supreme Court in time bound matters. Admittedly, the case is fixed for framing of charge. Second ground of the applicant is that the applicant has not been produced before the Court for fourteen days. However, his counsel fairly conceded that he had not applied to the concerned Court for framing the charge through video conferencing to expedite the matter. It seems that it is a just fault finding practice to secure the bail.

6. The learned APP submits that 07.10.2024 is the date fixed for framing the charge. Since there was a huge rush in the jail at Ahmednagar, the applicant has been transferred to Aurangabad Jail. The Investigating Officer would either produce the applicant physically or if not possible on video conferencing by requesting the Court. So the charge may be framed and trial may be commenced. He also submits that so far as the ground of love affair with the victim, this fact was well within the knowledge of the applicant when he applied for the bail for the first time. Affidavit in reply of the father of the victim bears no value. It does not bear the signature of the victim. Father cannot take the decision about the life of the victim. The possibility of threatening the witnesses, the victim and parents can not be ruled out.

The incarceration of the applicant is not for longer period. Considering heavy workload on the Court, reasonable time may require to complete the trial. Since the Court could not frame the charges for his non-production, it cannot be said that it was deliberate delay. Therefore, the applicant does not claim the bail.

7. Long incarceration in jail without material progress in the trial may be a ground to grant bail. Every Court should get reasonable time to touch the matter of undertrials. It is also experienced that the Advocates appearing in the trial Court are facing for producing the accused physically and they do not support for producing the accused on video conferencing. If really, the applicant was interested to support the prosecution, he would have applied to the trial Court to frame the charge by producing accused on video conferencing. This was not done. It was let go practice. Now, the applicant is approaching the Court for bail on the ground that there is no material progress in the trial. This Court, many times, has observed that this is a work team and not exclusive responsibility of a single part of the system. The Court has to consider a huge burden on the trial Court and the way in which the trials are conducted. Therefore, this Court is of a view that in such a situation, it cannot be said that the applicant deserves bail as he is incarcerated for a short period. The learned APP has correct in contending that the father of the victim has no right to take decision of life of the victim, who has been sexually assaulted without her consent.

Therefore, the affidavit though supporting the applicant for bail cannot be taken into consideration.

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

(S.G. MEHARE, J.)

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