

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

BAIL APPLICATION NO. 2701 OF 2023

Anita Bandu Kale @ Anita Wagholikar

.Applicant

Versus

The State of Maharashtra & anr.

.Respondents

Mr. Aniket Nikam i/b. Mr. Amit Icham, Advocate, for the Applicant
Ms. R. V. Newton, APP, for Respondent No. 1 – State
Ms. Keral Mehta, Advocate, for Respondent No. 2

CORAM : MADHAV J. JAMDAR, J.

DATE : 28.08.2024

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1. Heard Mr. Nikam, learned Counsel for the Applicant, Ms. Newton, learned APP for Respondent No.1-State and Ms. Mehta, learned Counsel appointed to represent interest of the Respondent No.2.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973* ("CrPC"). The relevant details are as follows:

1.	C. R. No.	271 of 2023
2.	Date of registration of F.I.R.	22.05.2023
3.	Name of Police Station	Jodbhavi Peth, Solapur
4.	Sections invoked	370, 376, 342 r/w. 34 of the IPC,

		1860; 3, 4, 5, 6 of the the Immoral Traffic (Prevention) Act, 1956; 4, 6, 8, 10, 12 and 17 of the POCSO Act, 2012; 81 of the Juvenile Justice (Care and Protection of Children) Act, 2015;
5.	Date of arrest	22.05.2023
6.	Date of filing of Charge-sheet	12.07.2023

3. As per the prosecution case, as the relations between parents of the victim were not cordial and as there were frequent quarrels between them, they started residing separately from the year 2011. At that time, the victim was only three years old and she resided with her father, who is Accused No.1. It appears that when the victim was 12 years old, Accused No.1 – father sold her to an organisation by the name 'Jay Malhar Lok Kala Kendra' in lieu of consideration. It appears that thereafter the victim was sold to five such Lok Kala Kendras by the Accused No.1 – father who accepted consideration for the same. On 17.05.2023 the victim contacted her mother through social media and thereafter the mother lodged a complaint. The victim was rescued and handed over to her mother.

4. The present Applicant is Accused No.2. As per the prosecution case, the present Applicant is concerned with Natraj Kala Kendra. The role attributed to the present Applicant is that she had paid an amount

of Rs. 2,50,000/- to the father of the victim and forced the victim to dance in front of other people. It is also the prosecution case that the Applicant had accepted money from various persons and forced the victim to have physical relations with them.

5. It is the submission of Mr. Nikam, learned Counsel for the Applicant that investigation is complete and charge-sheet has already been filed. He submitted that the Applicant is a woman and is incarcerated since more than 1 year 5 months. Charge is not framed. There are about 33 witnesses in the Charge-sheet. Trial will take a considerably long time. The co-accused who had forceful physical relationship with the victim, have been enlarged on bail. It is his submission that the victim in her first statement (Page No. 61) dated 21.05.2023 had stated that the Applicant forced her to dance in front of the customers of the said kala kendra. He submitted that in the said statement, it is stated that one Meena Pargaonkar used to send the victim to different people and those persons used to forcefully have physical relations with the victim. However, same role has not been attributed to the Applicant in the said statement. He submits that in the supplementary statement of the victim dated 24.05.2023 (Page No. 63), the victim has stated that the Applicant forced the victim to have physical relationship with two people on different occasions. He

submitted that those two persons have been released on bail by this Court. He submits that in the statement (Page No. 73) recorded under Section 164 of the Cr.P.C., the victim has levelled allegations against the Applicant and in the said statement, the allegations are made that co-accused – Chaya Nerlekar, Poonam Bidkar, Shivkanya Dhondraykar, Meena Pargaonkar, Dhanure as well as the present Applicant have taken money from the different customers and forced the victim to have physical relationship with those persons. He submitted that bail has been granted to Accused No. 7 – Poonam Bidkar. He submitted that the role attributed to the said Accused No. 7 – Poonam Bidkar is the same as attributed to the present Applicant. Therefore, he submitted that the Applicant may be enlarged on bail. He submits that in any case, investigation is complete and the charge-sheet is filed. There is no progress in the trial and even charge is also not framed. He submits that the Applicant has no antecedents.

6. On the other hand, Ms. Newton, learned APP for Respondent No.1-State and Ms. Mehta, learned Counsel appointed to represent interest of Respondent No.2 vehemently opposed the Bail Application. Both of them submitted that the material on record shows that father of the victim had been paid from time to time various amounts by the Applicant. Both of them pointed out forensic report of the victim and

submitted that same corroborates sexual assault. Both of them, therefore, prayed that the Bail Application be rejected.

7. Ms. Mehta, learned Counsel appointed to represent interest of Respondent No. 2 pointed out Section 370 of the *Indian Penal Code, 1860* and submitted that maximum punishment is life imprisonment. She also pointed out Section 29 of the *Protection of Children from Sexual Offences Act, 2012* ('POCSO') providing presumption. She therefore, submitted that the Bail Application be rejected.

8. Perusal of the various statements annexed to the charge-sheet show that the offence is very serious and heinous in nature. The victim at the relevant time was about 15 years and 3 months old. The material on record shows that the present Applicant had paid money to the father of the victim and kept her at Natraj Kala Kendra, Solapur. The victim was forced to dance in front of the customers of the said Kala Kendra as well as the victim was forced to keep sexual relationship with the various persons.

9. It is true that this Court had granted bail to the Accused No. 7 – Poonam Bidkar by Order dated 10.07.2024 passed in B. A. No. 2685 of 2023. However, various statements of the victim and other witnesses do not show that said Poonam Bidkar – Accused No. 7 had received Rs. 2,50,000/-. The only allegation is that said Poonam Bidkar –

Accused No. 7 had forced the victim to dance in front of various persons but there is no allegation concerning forcible physical relationship. Insofar as Accused No. 7 – Poonam Bidkar is concerned, *prima facie*, the statements of the victim recorded from time to time (except the statement recorded under Section 164 of the Cr.P.C.) do not show that there were allegations that Accused No. 7 – Poonam Bidkar had forced victim to have physical relationship with other persons. In any case, there is no material on record to show that she has accepted monetary consideration. Thus, the Applicant cannot claim parity with respect to the Order granting bail to the co-accused – Poonam Bidkar.

10. As the allegations against the present Applicant are of very serious and heinous in nature, no case is made out for grant of bail.

11. However, it is required to be noted that the Applicant was arrested on 22.05.2023. The Charge-sheet was filed on 12.07.2023. There are about 33 witnesses proposed to be examined by the prosecution as per the charge-sheet. Insofar as the progress of the trial, even charge is also not framed. In this case, there are total 13 accused, out of which, 4 are absconding and no steps are taken by the State of Maharashtra to arrest the said 4 accused. There is nothing on record to show, that any steps are taken to bifurcate the trial. Therefore, it is not likely that the trial will conclude within reasonable time.

12. Speedy trial is one of the facets of right to life and liberty guaranteed under Article 21 of the Constitution of India. Speedy trial is an essential ingredient of “reasonable, fair and just” procedure guaranteed by Article 21 and it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial to the Accused.¹ Therefore, the Applicant is entitled for bail.

13. As the offence is very serious and heinous in nature and there is a possibility of the Applicant influencing the witnesses, Mr. Nikam, learned Counsel for the Applicant submitted that the Applicant will reside at the residence of Prayagabai Kale, R/o. Wagholi, Taluka – Shegaon, District – Ahmednagar and will attend the Shegaon Police Station.

14. The Applicant is a woman aged 46 years.

15. The Applicant does not have any criminal antecedents.

16. The Applicant does not appear to be at risk of flight.

17. Accordingly, the Applicant can be enlarged on bail by imposing strict conditions.

18. In view thereof, the following order:

ORDER

(a) The Applicant - Anita Bandu Kale @ Anita Wagholikar
be released on bail in connection with C. R. No. 271 of 2023

¹ Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98

registered with the Jodbhavi Peth Police Station, District-Solapur on her furnishing P. R. Bond of Rs. 1,00,000/- with one or two local solvent sureties in the like amount;

(b) On being released on bail, the Applicant shall furnish her cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto;

(c) The Applicant shall report to the Investigating officer of the concerned police station twice a week between 11.00 a. m. and 1.00 p. m. on every Monday and Friday;

(d) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case, so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel;

(e) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner;

(f) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat;

(g) The Applicant shall surrender her passport, if any, to the Investigating Officer.

19. The Bail Application is disposed of accordingly.

20. It is clarified that the Trial Court shall decide the case on its merits, uninfluenced by the *prima facie* observations made in this order.

21. This Court places on record its appreciation of the assistance rendered by Ms. Keral Mehta, learned Counsel appointed to represent interest of Respondent No.2. The High Court Legal Services Committee, Mumbai is requested to pay her the professional charges as per the rules and her name be included in the panel maintained by the High Court Legal Services Committee, Mumbai.

[MADHAV J. JAMDAR, J.]