

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1555 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Yogesh Laxman Sarap ...Applicant
Versus
The State of Maharashtra ...Respondent

Ms. Vilasini Balasubramanian, Appointed Advocate for the
Applicant.

Mr. Tanveer Khan, APP for the State/Respondent.

Ms. Shradha Sawant, Appointed Advocate for respondent
No.2/victim.

PSI R. N. Loke, Sakinaka Police Station, Pairavi Officer,
present.

CORAM: N. J. JAMADAR, J.
DATED: 12th MARCH, 2024

PC:-

1. Heard the learned Counsel for the parties.
2. This application is preferred through Jail. The applicant and co-accused have been arraigned in Session Case No.282 of 2016 arising out CR No.72 of 2016 registered with Sakinaka Police Station, Mumbai, for the offences punishable under Sections 376 and 376(D) read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code").
3. The victim is a 19 year old mentally retarded girl. Manisha Shedge is the paternal aunt of the victim. On 2nd February, 2016 the first informant had a urine pregnancy

test of the victim as she had missed her periods. The test turned out positive. Upon enquiry with the victim, the victim narrated the incidents of sexual exploitation at the hands of the applicant and co-accused Rajesh Shigvan and Keshav Yadav. Victim also narrated the incident of the accused taking turns to sexually exploit her.

4. Mr. Balasubramanian, the learned Counsel, who has been appointed to espouse the cause of the applicant, submitted that the applicant has not been specifically named in the statement of the victim, which came to be recorded on 5th February, 2016. Two other persons have been named as Katli and 'uncle with beard'. The allegations have been made against those two persons and not the applicant. It was further submitted that there is no material to indicate that the applicant was identified by the victim as one of the persons, who had exploited her. As the applicant has been in custody since more than eight years and the trial has not progressed, the applicant deserves to be enlarged on bail.

5. The learned APP resisted the prayer for bail.

6. Mr. Sawant, the learned Counsel appointed to espouse the cause of the victim, submitted that in the said statement dated 5th February, 2016 there is a reference to the role of the

applicant in answer to question No.14. The victim was allegedly taken by the accused who was identified as 'uncle with beard' to the house of the applicant where the applicant and the said co-accused allegedly committed gang rape. The learned Counsel also invited the attention of the Court to the statement of the Manisha Shedge, who has categorically stated that the victim has named the applicant as the person who had repetitively raped her.

7. In the backdrop of the nature of the accusation, especially the fact that the victim was a mentally retarded girl, it would be rather difficult to accede to the submission, at this stage, that there is no material to *prima facie* connect the applicant with the alleged offences. The material on record indicates that the victim was exploited repetitively and the victim eventually became pregnant. The nature of the allegations can only be stated to be grave.

8. It is true that the applicant has been in custody since more than eight years. The copies of the *roznama* tendered for the perusal of the Court indicate that the learned Advocate, who has been appointed to represent the applicant, did not appear before the Court though the witnesses were

present and, therefore, the learned Sessions Judge was constrained to adjourn the trial.

9. In the circumstances of the case, it would, therefore, be expedient to request the learned Additional Sessions Judge to conclude the trial in Sessions Case No.282 of 2016 as expeditiously as possible. If the Advocate, who has been appointed to espouse the cause of the applicant before the Sessions Court, does not appear, it would be open for the learned Additional Sessions Judge to appoint another Advocate, who would appear regularly and diligently conduct the trial on behalf of the applicant.

10. Hence, the following order:

: O R D E R :

- (i) Application stands rejected.
- (ii) The learned Additional Sessions Judge, seized with Sessions Case No.282 of 2016 arising out of CR No.72 of 2016, is requested to make an endeavour to conclude the trial as expeditiously as possible and, preferably, within a period of six months from the date of the communication of this order.

- (iii) In any event, the learned Additional Sessions Judge is requested to make an endeavour to record the evidence of the victim and the first informant, in a couple of months.
- (iv) In the event, the trial is not concluded within the said period of six months, the applicant shall have liberty revive the prayer for bail.

[N. J. JAMADAR, J.]