

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1414 OF 2024**

Jagdish Bhikari Varma	...	Applicant
vs.		
The State of Maharashtra and another	...	Respondents

Mr. Narayan Gopinath Rokhade a/w. Mr. Paramhans Sushil Kumar Dixit for applicant.

Mr. Prasanna P. Malshe, APP for respondent No.1-State.

Ms. Komal Sinha for respondent No.2.

Mr. S. S. Ghag, PSI, Malvani Police Station, Mumbai.

**CORAM : MANISH PITALE, J.
DATE : 11th SEPTEMBER, 2024**

P.C. :

. Heard learned counsel for the applicant, learned APP for respondent No.1-State and the learned counsel appointed to appear on behalf of respondent No.2.

2. The applicant was arrested on 27.02.2017 in connection with FIR No.142 of 2017 dated 27.02.2017, registered at Malwani Police Station, Mumbai for offences under sections 376(1) and 376(2)(i) of the Indian Penal Code, 1860 (IPC) and sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). As a consequence, the applicant has remained incarcerated as an undertrial for almost 7 years and 7 months. Charge was recently framed on 03.09.2024 and the trial is yet to begin.

3. The learned counsel for the applicant submitted that since the FIR was registered on 27.02.2017 and amendments to the IPC and POCSO Act were

made thereafter, the extent of punishment that can be imposed upon the applicant has to be viewed as per the pre-amendment stage of the IPC and POCSO Act. It is brought to the notice of this Court that taking into consideration the aforesaid scenario, the applicant, upon conviction, may have to face imprisonment for period between 7 years to life imprisonment. Reference is made to section 479 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS), to contend that this Court may consider the period of incarceration already undergone as a factor for enlarging the applicant on bail, particularly in the light of the fact that the trial is yet to begin. It is submitted that this Court, as a Constitutional Court, may exercise its power in favour of the applicant, who is a senior citizen, today aged about 73 years, having undergone incarceration for more than 7 years. Also, there are no criminal antecedents against the applicant.

4. On the other hand, the learned APP and the learned counsel appearing for respondent No.2 vehemently opposed the present application, submitting that period of long incarceration and stage of trial may not be relevant in the present case, as serious allegations of sexual abuse have been made against the applicant in the context of the victims, who, at the relevant time, were aged only about 6 years and 10 years. It is submitted that with passage of time, the victims are still below 18 years of age and if the applicant is enlarged on bail, it may have adverse consequences on the victims and the process of trial.

5. Reference is made to the statements of victims, recorded under section 164 of Criminal Procedure Code, 1973 and other such material on record, to indicate that it clearly demonstrates involvement of the applicant in the said heinous crime and therefore, no sympathy may be shown to the applicant. It

was submitted that appropriate directions can be given for expediting the trial, instead of enlarging the applicant on bail.

6. This Court has considered the rival submissions. The Supreme Court, in its judgment in the case of *Union of India vs. K. A. Najeed* [(2021) 3 SCC 713] as also in the case of *Javed Gulam Nabi Shaikh vs. State of Maharashtra and another* (2024 SCC OnLine SC 1693) and a number of other judgments, has emphasized upon the power to be exercised by the Constitutional Courts in the context of bail applications, where the accused undertrials have suffered long incarceration and the trial is yet to commence. In these judgments, the Court has emphasized upon the right to speedy trial of the accused undertrial as a facet under Article 21 of the Constitution of India. It is laid down that even in cases involving special statutes and serious crimes, the Constitutional Courts can certainly exercise such powers. In fact, in the said judgment in the case of **Javed Gulam Nabi Shaikh vs. State of Maharashtra and another** (*supra*), it is specified that seriousness of the offences registered against the accused undertrial cannot be a factor preventing the Constitutional Courts from exercising powers to grant bail in cases of long incarceration. The indication is that the process ought not to become punishment.

7. In the present case, it is not seriously disputed that the applicant is now aged about 73 years. He was arrested on 27.02.2017, thereby indicating that he has already undergone incarceration for about 7 years and 7 months. The charge was only recently framed on 03.09.2024 and the trial is yet to begin.

8. The learned counsel for the applicant is justified in pointing out that since the offences against the applicant were registered prior to amendment

of the relevant provisions of IPC and POCSO Act, which enhanced the minimum punishment that can be imposed in such circumstances, due consideration ought to be given to the fact that the punishment to be imposed upon the applicant, if at all he is convicted, has to be based as per the pre-amendment position. Taking into consideration the said factor, it becomes evident that the applicant, if at all convicted, would face sentence of imprisonment ranging from 7 years to life imprisonment. There are no criminal antecedents against the applicant.

9. Admittedly, the applicant has already undergone incarceration for a long period of 7 years and 7 months. As a Constitutional Court, this Court is inclined to exercise power in favour of the applicant on the ground of long incarceration and the fact that the trial is yet to begin. That this Court can issue direction for expeditious completion of trial in a time-bound manner, cannot be a consideration in itself to reject the prayer for bail, when the admitted position on facts shows that the applicant has indeed undergone long period of incarceration as an undertrial, with remote possibility of the trial being completed in a reasonable period of time.

10. Hence, this application deserves to be allowed, only on the said consideration without commenting on the merits of the matter.

11. In view of the above, the application is allowed in the following terms:

- (i) The applicant shall be released on bail in connection with FIR No.142 of 2017 dated 27.02.2017, registered at Malwani Police Station, Mumbai, on furnishing PR Bond of ₹ 50,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

- (ii) The applicant, upon being released on bail, shall report to Malwani Police Station, Mumbai on the first Monday of each month between 10:00 a.m. and 12:00 noon during the pendency of trial.
- (iii) The applicant shall not contact the victim or the informant, in any manner, during the pendency of the trial.
- (iv) Upon release, within one week, the applicant shall inform the Investigating Officer as well as the trial court about his contact number and residential address and update the same in case of any change.
- (v) The applicant shall co-operate with the trial Court in completing the proceedings expeditiously and attend the proceedings before the trial Court on each and every date, unless specifically exempted.
- (vi) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not undertake any action that may influence the informant, witnesses and other persons concerned with the case.

12. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions are violated.

13. The applicant is permitted to furnish cash security of ₹ 50,000/- in lieu of surety for a period of four weeks.

14. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

15. The application is disposed of.

(MANISH PITALE, J)