

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1575 OF 2024

Vijay Rajendra Bhosale

... Applicant

Versus

State of Maharashtra and Anr.

... Respondents

.....

Ms. Shubhangi Parulekar a/w. Ms. Divya Parab, Advocate for the Applicant.

Smt. Sangeeta D. Shinde, APP for Respondent No.1 – State.

Mr. Shaikh Mohd. Yakub Mohd. Yusuf, appointed Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATED : 17th OCTOBER, 2024.

P.C. :

1. By this application, applicant is seeking regular bail in Crime No. 1050 of 2020 registered with Samarth Police Station, Pune under Section 377, 506 of Indian Penal Code, 1860 (“**IPC**”) and under Sections 3-A, 4, 5(1), 6 of the Protection of Children from Sexual Offences Act, 2012 (for short “**POCSO Act**”).

2. It is prosecution's case that on 25.10.2020 applicant took the victim to his office under pretext of giving him job and committed unnatural sex with him. Thereafter applicant gave Rs.200/- to the victim and told him not to disclose the incident to anyone. It is alleged that on 28.10.2020 again applicant took the victim to his house and told him that

if he was in need of money he would give him money. The victim boy was in tension due to act done by the applicant he narrated the incident to his parents. Thereafter complaint was lodged against the applicant under the above referred sections.

3. It is contention of learned counsel for the applicant that applicant has been falsely implicated in this case. Applicant is behind bar for more than 4 years. No charge is framed. It may take time to conclude the trial. Applicant is karta of his family. The informant i.e. mother of the victim had filed application before the Special Court stating that she has no objection to allow the bail application of the applicant as she had filed complaint against the applicant under wake of anger but this fact is not considered by Special Court, hence requested to allow the application.

4. It is contention of learned APP and learned counsel for respondent No.2 that applicant has committed unnatural sex with the victim boy who was 15 years old at the time of incident, thereafter applicant told him not to disclose the said incident to anyone. There is prima facie case against the applicant. If applicant is released on bail he may threaten the victim boy and his parents and he may abscond hence, requested to reject the application.

5. I have heard all the learned counsel. Perused the chargesheet produced on record. Applicant is behind the bar for more than four years.

Yet charge has not been framed against him. When this Court enquired with the learned APP why charge is not framed and called the roznama of the learned Special Judge.

6. Before I comment on merit of this bail application, it would be just and proper to take note of pathetic situation of the under-trial prisoners. The present application is one of such example, which necessitates this Court to take note of the same. The Applicant is languishing in jail for more than four years. The case is of sole accused. It is admitted position that the charge is not framed. It depicts from the Roznama that on 66 dates the criminal case was fixed for framing charge by the trial court is not only disturbing factor to this court but the entire Judicial institution.

6.1. The technology is developed to such an extent that the charge can be framed even through virtual hearing. The Apex Court time and again impressed upon the Judicial Officers to make effective use of the technology.

6.2. The record nowhere indicates that due to dilatory tactics adopted by the accused, the Court was unable to frame charge. This Court is aware that the Trial Courts are burdened with the cases. However, it does not mean to adjourn the case only to frame the charge on 66 occasions. It transpires from the record, more precisely, Roznama that the

case was adjourned on account of draft charge is not furnished by the prosecution. The provisions under Code of Criminal Procedure nowhere mandates the prosecution to submit a draft charge. The learned Public Prosecutor has also failed to point out any provision either in the Code of Criminal Procedure or Criminal manual that without supplying the draft charge, court cannot proceed with framing of charge. The framing of charge is one of the crucial function to be discharged by the presiding Judge. The Presiding Judge needs to take into consideration the entire charge sheet and then to frame charges precisely.

The Section 226 of the Code of Criminal Procedure reads as follows: -

"226. Opening case for prosecution: accused appears When the or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused."

This section simply provides that the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused. This provision is within an object to assist the Court about the material placed record by the prosecution. This provision nowhere states that it is mandatory upon the prosecutor to supply the draft charge to the Presiding Judge.

6.3. It is settled that speedy justice is a part of Fundamental Right under Article 21 of the Constitution of India. Therefore, all litigation must come to an end at the earliest.

The Apex Court in *Hussainara Khatoon and Others Vs. State of Bihar [AIR 1979 SC 360]* held that any procedure which does not ensure a reasonable quick trial cannot be regarded as fair and just and it would fall foul of Article 21 of the Constitution of India. Therefore, speedy trial which mean reasonable expeditious trial is an integral and essential part of the fundamental right of life and liberty enshrined in Article 21 of the Constitution of India.

A three Judges Bench of the Supreme Court in *Bal Krishna Vidur Vs. State of U. P. [(2003) 12 SCC 186]* held that delay in framing of charge is negation of principles of speedy trial and courts should not be casual in dealing with such cases and keep them pending for long periods, while the accused languishing in custody.

6.4. Having regard to the factual position, i.e., pathetic situation of the under trial prisoners coupled with legal position laid down by the Apex Court, this Court is of the opinion that it is necessary to issue certain directions to all the Trial Courts, more precisely, Session Courts dealing with the cases of under trial prisoners to keep in mind the legal position laid down by the Hon'ble Apex Court in *Hussainara Khatoon and Bal*

Krishna Pandey alias Vidur (Supra).

There is need of periodical supervision by the Principal District and Session Judges. It is advisable that the Principal District Judges shall call the statement from the Courts dealing with the criminal cases as to in how many cases of under trial prisoners, the charge is not framed within six months from the date of filing of the chargesheet.

6.5. In the result, all the Sessions Judges/Assistant Sessions Judges in the State including Union Territories are directed to frame charge against the under trial prisoners as early as possible and not beyond the period of six months from the date of filing of the chargesheet. They shall not wait for draft charge from the office of the Public Prosecutor. The Sessions Judges/Assistant Sessions Judges are at liberty to pass specific orders, if there is/are dilatory tactics on the part of the under trial prisoner to prolong the stage of framing of charge.

6.6. The Principal District and Sessions Judge shall call report on the above lines after every three months and if it is noticed that despite filing of the chargesheet, charge is not framed for the period of six months, then issue necessary directions. These directions are basically issued in respect of under trial prisoners.

6.7. The Registrar (Judicial) is directed to circulate copy of this order to all the Principal District and Sessions Judges with a request to

circulate the same amongst all the Judges under their control/jurisdiction and impress upon them to comply with directions.

As far as present application is concerned, the Registrar (Judicial) shall call report from the concerned Judge for delay in framing of charges.

7. Coming to the merit of this application, applicant is behind bar for more than four years. Investigation is completed. Chargesheet has been filed. The informant, mother of victim has filed application before the Special Court stating that she had filed complaint against the applicant in wake of anger. The applicant is karta of his family. It may take time to conclude the trial. Considering these facts, further detention of the applicant is not required and I pass following order:

ORDER

- (i) The applicant be enlarged on bail in Crime No. 1050 of 2020 registered with Samarth Police Station, Pune on furnishing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.
- (iii) Applicant shall inform his latest place of residence and

mobile number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Investigating Officer.

(iv) Applicant shall not leave country without permission.

8. The Application is allowed in the aforesaid terms and is accordingly disposed off.

9. All concerned to act on the authenticated copy of this order.

(SHIVKUMAR DIGE, J.)

Digitally signed
by SONALI
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KILAJE
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