

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 4033 OF 2023**

Sunil Damu Umbarsanda	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

**WITH
BAIL APPLICATION NO. 2001 OF 2024
WITH
INTERIM APPLICATION NO. 682 OF 2024
IN
BAIL APPLICATION NO. 2001 OF 2024**

Mr. Umesh S. Iyer a/w. Mr. Arun Mokal and Mr. Amresh Jadhav for applicant in BA/4033/24.

Mr. M. S. Mulla for applicant in BA/2001/2024.

Ms. R. V. Newton and Ms. Megha S. Bajoria, both APPs for respondent-State in both applications.

Mr. Vijay Sahebrao Dakhore, PSI, Wada Police Station, District Palghar.

**CORAM : MANISH PITALE, J.
DATE : 18th OCTOBER, 2024**

P.C. :

. There are two bail applications for consideration. One of the applicants i.e. applicant in Bail Application No.4033 of 2023 had earlier filed bail application before this Court. By order dated 12.10.2022, this Court (Coram: Bharati Dangre, J) observed as follows:

- “1. On expressing my disinclination to entertain the application learned counsel seeks permission to withdraw the application.

The counsel has however invited my attention to a glaring aspect of the matter being that the applicant came to be arrested in the subject C.R. on 5/03/2021, and since then he remained incarcerated in Taloja Jail. More than 5 years down the line the trial has not been concluded.

2. Right to speedy trial being his fundamental right recognize as an integral part of article 21 of the Constitution, when the learned APP is unable to make any statement about progress of the trial and Mr. Sarkar submit that even charge has not been framed, I deem it appropriate to direct the Additional Sessions Judge, Thane, who is seized of Sessions Case No. 214 of 2017 to make every endeavour to conclude the trial within a period of one year and preferably by fixing the schedule of the trial on day today basis.
3. I would like to place my appreciation for Adv. Subir Sarkar, who was appointed through Legal Aid to represent the complainant and let the Legal Services Authority make a legal remuneration due and payable to the learned counsel within a period of 4 weeks.

Application is dispose off.”

2. It appears that on the said date, this Court was not correctly apprised on the aspect of framing of charges, for the reason that the charges were already framed as far back as on 06.03.2019 by the Court of Additional Sessions Judge and Special Judge (SC & ST Act), Thane, when Sessions Case was then numbered as Sessions Case No.214 of 2017. Subsequently, the case was transferred to the Court of District Judge and Additional Sessions Judge, Bhiwandi. It was re-numbered as Special Case No.296 of 2023.

3. The record shows a report dated 14.03.2024 submitted by the Court of District Judge-1 and Additional Sessions Judge, Bhiwandi. The said report records that the *roznama* of the case transferred to Bhiwandi, did not show

any entry recording the aforesaid direction issued by this Court (Coram: Bharati Dangre, J) by order dated 12.10.2022 for disposing of the said case in a time-bound manner. It was also stated that the record and proceedings of the said case were received at Bhiwandi in November 2023, with a further note that on due dates, the accused were not produced before the Court. Thereafter, the report has given statistics about huge pendency of criminal cases before the said Court and it is indicated that efforts would be made to dispose of the present case as early as possible.

4. The learned APPs, on instructions, submitted that as on today, even the first witness has not been examined. It is brought to the notice of this Court that witness summons have been issued to the victim, who is proposed to be examined by the prosecution. The next date in the sessions case before Bhiwandi Court is 05.11.2024.

5. The application of the applicant in Bail Application No.2001 of 2024 is his first such application for bail before this Court.

6. It is a matter of concern that while the applicants before this Court in these two applications do not appear to have a case on merits for being enlarged on bail, but since they have remained incarcerated for a period of about 7 years and 6 months, on the ground of long incarceration and the stage of trial before the concerned Court, the prayer for bail is being pressed on their behalf.

7. Considering the fact that the victim in the present case, was a minor aged about 16 years and this is a case of gang rape under Section 376D of

the Indian Penal Code, 1860, apart from serious offences under the Protection of Children from Sexual Offences Act, 2012, it would be appropriate that these applications are kept pending and appropriate directions are issued to the Court at Bhiwandi to take up the sessions case in right earnest and to start recording the evidence of the witnesses, particularly the most crucial witness in this case i.e. the victim herself.

8. The prosecution is directed to ensure that there are no technical lacunae on the next date of listing of the case before the Court of District Judge-1 and Additional Sessions Judge, Bhiwandi in Special Case No.296 of 2023. The Court is also directed to ensure that sufficient notice is given to the witness to appear on the next date i.e. 05.11.2024, so that the recording of evidence can start immediately. This Court will not tolerate any lacunae on the part of either the prosecution or the concerned Court. The applicants and the accused persons are directed to co-operate with the said Court for immediate initiation of recording of evidence in Special Case No.296 of 2023.

9. This order shall be communicated to the Court of District Judge-1 and Additional Sessions Judge, Bhiwandi, where Special Case No.296 of 2023 is pending, so that appropriate steps are taken in terms of directions given hereinabove.

10. List both the applications for further consideration/direction on 12.11.2024 at the top of the board.

(MANISH PITALE, J)