

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3099 OF 2024

Sagar Bharat Chavan	...Applicant
<i>Versus</i>	
The State of Maharashtra & Anr.	...Respondents

Mr. Santosh Musale for the Applicant.
Ms. Vilasini Balsubramaniam, for Respondent No.2.
Ms. P. P. Bhosale, APP for State.
A.P.I. Mr. Balvant Patil, Khandeshwar, Police Station, Navi Mumbai.

CORAM: MADHAV J. JAMDAR, J.
DATED: 4th DECEMBER 2024

P.C.:

1. Heard Mr. Musale, learned Counsel appearing for the Applicant, Ms. Bhosale, learned APP for the Respondent State and Ms. Balsubramaniam, learned Counsel appointed to represent the interest of the Respondent No.2.
2. This is Second Bail Application filed by the Applicant under Section 439 of the *Code of Criminal Procedure, 1973* ("Cr.P.C") in connection with C.R. No. 62 of 2023 registered with Khandeshwar Police Station, Navi Mumbai, for the offences punishable under Section 354-A of the *Indian Penal Code, 1860* and under Sections 8, 10 & 12 of the *Protection of Children From Sexual Offences Act, 2012* ("POCSO Act").

3. By order dated 4th April 2024, first Bail Application filed by the Applicant being Criminal Bail Application No. 2739 of 2023 has been allowed to be withdrawn by this Court with liberty to file fresh Bail Application after a period of 1 year, if there is no substantial progress in the trial.

4. It is required to be noted that immediately the Applicant preferred another Bail Application before the learned Sessions Judge on 19th April 2024 i.e. within a period of 15 days from passing of the order dated 4th April 2024 giving liberty to the Applicant to file fresh Bail Application after a period of 1 year if there is no progress in the trial. The said Bail Application bearing Exhibit-8 in Special Case (POCSO) No. 87 of 2023 was dismissed by the learned District & Sessions Judge, Navi Mumbai-Raigad by order dated 6th May 2024. Thereafter immediately present Bail Application is filed on 29th July 2024.

5. Thus, it is clear that inspite of withdrawal of the first Bail Application wherein liberty has been granted to move the fresh Bail Application after a period of 1 year, the Applicant has filed fresh Bail Application before the learned Trial Court within a period of 15 days. Thus, on this ground alone the Bail Application of the Applicant deserves to be dismissed.

6. As far as merits are concerned the learned District & Sessions

Judge in said order dated 6th May 2024 in paragraph No. 2 has set out the prosecution case. The said paragraph No.2 reads as under:-

"2. Brief facts of prosecution case is as under:-

Informant Jagdevappa Guranna Biradar lodged report with the police alleging that, on 06/03/2023, his daughter/victim returned back from school as usual, at about 06.00 p.m., she was crying and told that she will not go to the school in a van. This fact was stated by the victim to her mother Tripali who informed this to informant on phone and accordingly, he returned back home at about 10.00 p.m. When he returned home, victim again came crying to him and narrated to him that she will not go to school. He asked the reason why she is talking like this. Victim narrated that school van in which she is going every day, she will not go further in that van and was crying in raised voice. Therefore, informant called the driver of the van on phone by name Sagar Chavhan. He told the driver why victim is crying and refusing to travel in your van. But he did not reply anything and cut the call of the informant. On 07/03/2023, there was holiday to the school and the victim was in the house. Informant went to his workplace and returned at 09.00 p.m. He found victim was very much silently sitting in the house. He took her in confidence and asked her why she is not ready to go in the van. She narrated that “स्कूल व्हॅनचे अंकल (सागर चव्हाण) यांनी मी शाळेत जाताना मला स्कूल व्हॅनमध्ये पुढे बसण्यास सांगून पुढे बसण्यास बोलावले व मी पुढे बसल्यावर माझे युनिफॉर्म टॉपचे आत उजवा हात घालून माझे छातीवरून हात फिरवून छातीस दाबले व त्यांनी माझे स्कर्टचे आत हात घालून पॅटीवरून हात फिरवला, म्हणून मी या व्हॅनमधून शाळेस जाणार नाही.” Thus, informant lodged FIR with the police and accused came to be arrested."

Thus, as per the prosecution case the Applicant had sexually assaulted the victim of 9 years. The incident took place in the school

bus and the Applicant was the driver of the School Bus.

7. The offence alleged against the Applicant is of very serious nature. The offence is punishable under Section 354-A of the IPC, and under Sections 8, 10 & 12 of the POCSO Act. The victim is a child of 9 years. The incident took place in the school Bus and the Applicant was the driver of the School Bus. Thus, this is not a case of grant of Bail on merits.

8. Perusal of the Roznama (annexed on page Nos.121 to 123), which has been annexed to the Additional Affidavit dated 2nd December 2024 of Balwant Patil, API, Khandeshwar Police Station, Navi Mumbai, District-Raigad filed by the State of Maharashtra, shows that in fact the Applicant had refused to proceed in the said Session Case on two dates on the ground that proceedings are pending before the High Court. The said Roznama also shows that on few dates the Applicant was not produced before the Court.

9. The Supreme Court in the case of ***High Court Bar Association, Allahabad Vs. State of Uttar Pradesh***¹ has held that Constitutional Courts, in the ordinary course, should refrain from fixing a time bound schedule for the disposal of the cases pending before any other Courts. However, it is clarified that Constitutional Courts may issue directions for the time-bound disposal of the cases only in

¹(2024) 6 SCC 267

exceptional circumstances.

10. It is required to be noted that the offence took place on 6th March 2023. The offence is under POCSO Act. Sub-Section (2) of Section 35 of the POCSO Act, provides that the special Court shall complete the trial as soon as possible within a period of one year from the date of taking cognizance of the offence.

11. It is true that in the case of ***High Court Bar Association Allahabad*** (supra) the Supreme Court has considered the time limits specified in various enactments for completion of the trial and held that due to the pendency of several matters, unfortunately, Criminal Courts are not in a position to implement the said provision. It has also been held that the Constitutional Courts should not pass directions for the time bound disposal of cases except under exceptional circumstances. The relevant paragraphs in ***Allahabad High Court, Bar Association*** (supra) are paragraph Nos.40 to 42, which read as under:-

"40. The situation in trial and District Courts is even worse. In 2002, in All India Judges Assn. (3) v. Union of India [All India Judges Assn. (3) v. Union of India, (2002) 4 SCC 247 : 2002 SCC (L&S) 508] , this Court passed an order directing that the Judge-to-population ratio within twenty years should be 50 per million. Even as of today, we are not able to reach the ratio of even 25 per million. The directions issued in Imtiyaz Ahmad v. State of U.P. [Imtiyaz Ahmad v. State of U.P., (2017) 3 SCC 658 : (2017) 2 SCC (Civ)

311 : (2017) 2 SCC (Cri) 228 : (2017) 1 SCC (L&S) 724] have not been complied with by the States by increasing the Judge strength of the trial and District Courts. The figures of pendency of cases in our trial courts are staggering. There are different categories of cases which, by their very nature, are required to be given utmost priority, such as the cases of the accused in jail and the cases of senior citizens. For example, there are many legislations like the Hindu Marriage Act, 1955, the Protection of Women from Domestic Violence Act, 2005, the Negotiable Instruments Act, 1881, etc. which prescribe specific time-limits for the disposal of cases. However, due to the huge filing and pendency, our courts cannot conclude the trials within the time provided by the statutes. There is a provision in the Code of Criminal Procedure, 1973, in the form of Section 309, which requires criminal cases to be heard on a day-to-day basis once the recording of evidence commences. The same section provides that in case of certain serious offences against women, the cases must be decided within two months of filing the charge-sheet. Unfortunately, our criminal courts are not in a position to implement the said provision.

41. Apart from dealing with huge arrears, our trial courts face the challenge of dealing with a large number of cases made time-bound by our constitutional courts. **Therefore, in the ordinary course, the constitutional courts should not exercise the power to direct the disposal of a case before any District or trial court within a time span.** In many cases, while rejecting a bail petition, a time-limit is fixed for disposal of trial on the ground that the petitioner has undergone incarceration for a long time without realising that the trial court concerned may have many pending cases where the accused are in jail for a longer period. The same logic will apply to the cases pending before the High Courts. When

we exercise such power of directing High Courts to decide cases in a time-bound manner; we are not aware of the exact position of pendency of old cases in the said courts, which require priority to be given. Bail petitions remain pending for a long time. There are appeals against conviction pending where the appellants have been denied bail.

42. *Therefore, constitutional courts should not normally fix a time-bound schedule for disposal of cases pending in any court. The pattern of pendency of various categories of cases pending in every court, including High Courts, is different. The situation at the grassroots level is better known to the Judges of the courts concerned. Therefore, the issue of giving out-of-turn priority to certain cases should be best left to the courts concerned. The orders fixing the outer limit for the disposal of cases should be passed only in exceptional circumstances to meet extraordinary situations."*

The conclusion of the Supreme Court in *Allahabad High Court, Bar Association* (supra) concerning this aspect is recorded in paragraph No.47.3, which reads as under:-

"47.3. *Constitutional courts, in the ordinary course, should refrain from fixing a time-bound schedule for the disposal of cases pending before any other courts. Constitutional courts may issue directions for the time-bound disposal of cases only in exceptional circumstances. The issue of prioritising the disposal of cases should be best left to the decision of the courts concerned where the cases are pending; and "*

(Emphasis added)

12. There are several cases filed under the provisions of the POCSO Act. However, it is required to be noted that a large number

of cases under the POCSO Act, are concerning offences arising out of consensual relationship where the victim is a minor and the accused is also of very young age. The said cases are required to be differentiated from the cases like the present case. In the present case victim is a 9 year old child. The FIR shows that the incident took place on 6th March 2023 in the school bus and the victim was continuously crying and informed the parents that she would not go by the school bus, however, refused to give reasons for the same and ultimately on 7th March 2023, when the victim was sitting silently at home she confessed to the first informant i.e. her father that the Applicant had sexually assaulted the victim. Thus, the factual aspects of this case squarely falls in the exception which is carved out in paragraph No. 47.3 by the Supreme Court in **Allahabad High Court, Bar Association** (supra).

13. It is also necessary to set out relevant discussion in the decision of this Court in the case of **Atul Gorakhnath Ambale Vs. State of Maharashtra²**. The relevant paragraphs are paragraphs Nos.13 and 14 which reads as under:-

" 13. It is pertinent to note, that in cases of sexual assault, the child/victim, suffers not only physical trauma, but even mental and emotional trauma, requiring the child/victim to undergo counselling and at times, even psychiatric help. The endeavour of the

² 2022 SCC OnLine Bom 873

counsellor is to help the child/victim tide over the trauma. Delay in examination of the child/victim would only add to the trauma, as the child/victim has to re-live the sexual assault, whilst deposing in Court. This would certainly add to the trauma of a child/victim. If the child/victim is examined expeditiously as mandated by sub-section (1) of Section 35 of the POCSO Act, the child/victim would be in a position to recall the incident vividly, as it happened and nail the perpetrator. Infact, if the child/victim is examined after a couple of years, delay in examination of the child/victim would only stand to benefit the accused, as the child/victim through counselling, is counselled to deal and overcome the emotional trauma and wipe out the traumatic memories, thus, making it difficult for the child/victim to recall the incident vividly, whilst deposing in Court. Due to passage of time, the child/victim who has undergone the sexual trauma, may not be able to recall the incident vividly, giving an undue advantage to the accused. Delay in trials in cases of sexual abuse of victims, often leads to re-victimization and ignominy, as the trial process itself makes the victim re-live the horrific experience. In case of small children/children of very tender age, due to their vulnerability, it may lead to further trauma. Delay in recording depositions would bring back the memories which the child/victim would want to forget, to haunt the child/victim, thus adding to the trauma. The possibility of the child being won over due to delay, rendering the victim hostile, also cannot be ruled out. It is possible that the appearance of the accused may undergo some change, making it difficult for the child/victim

to identify/recognize the perpetrator, thus, benefiting the accused. It is also possible that the child/victim is from a different State and would want to go back to her home town. These are some of the contingencies which are stated hereinabove, there could be many more. It appears that it is with this very solemn object, that the legislature in its wisdom specified the time frame within which the child/victim is to be examined, after the court takes cognizance.

14. *It is noticed that in several cases that the child/victim are not examined for years and therefore, it is imperative to give some directions to all Special Courts, with respect to examination of the child/victim in POCSO cases. The trial Courts i.e. Special Courts dealing with POCSO cases to atleast record the evidence of the child/victim, as expeditiously as possible and at the earliest, keeping in mind the mandate of sub-section (1) of Section 35. There may be cases where the child/victim has suffered a psychological trauma, due to which, it may not be possible to record the deposition of the child/victim, in terms of the mandate of sub-section (1) of Section 35 of the POCSO Act, hence, in these circumstances, certainly the recording of the evidence of the said child/victim can be postponed by the learned Judge or for any other reasons, however, reasons must be recorded for the said delay. Younger the child/victim, the Courts to endeavour to record their evidence, keeping in mind the mandate of Section 35(1) of the POCSO Act, lest, the child/victim forgets the incident due to passage of time and through counselling."*

(Emphasis added)

14. In *Atul Gorakhnath Ambale* (supra) a learned Single Judge of this Court issued following directions as more particularly set out in

paragraph No. 15. The said paragraph 15 reads as under:-

15. Accordingly, the following directions are issued to all the Special Courts in Maharashtra:

(i) The Special Courts to ensure that the deposition of the child/victim is recorded as expeditiously as possible, keeping in mind the mandate of the POCSO Act, and the observations made by this Court hereinabove.

(ii) The Special Courts to conclude the recording of evidence i.e. examination-in-chief and cross-examination of the victim, as expeditiously as possible, preferably on the same day, unless adjournment is warranted.

(iii) The Courts to also ensure that the victim/child is not called frequently to the Court, as this would add to victim/child's trauma.

(iv) Adjournments whilst examining the child/victim should be minimal and if granted, reasons be recorded warranting adjournment. Unwarranted adjournments should not be entertained.

(v) When the child/victim is examined, all precautions/safeguards i.e. child friendly practices be taken/adopted to ensure that the child/victim feels safe, is comfortable, and that the child/victim is not in any way exposed to the accused; that the proceedings are conducted in-camera; that all measures as stipulated in the Act and directions given by various judgments are duly complied with. It is always open for the learned Judge in cases, where necessary, to call the child/victim to Court, prior to recording of the deposition, so that, the child/victim is acclimatized/familiarized with the set-up, so that the child/victim has no fear of what to expect in Court on the day of the deposition, which can aid in the child/victim in deposing freely, without fear or anxiety.

(vi) The Court to ensure that the parents of the child or any other person in whom the child has trust or confidence, is present at the time of examination of the child, as mandated under Section 37 of the POCSO Act. If the Court is of the opinion that the child needs to be examined at a place other than the Court, it shall do so in terms of the proviso to Section 37.

(vii) The directions of the Apex Court in Children in Street Situations, In Re, 2022 SCC OnLine SC 189 and other judgments in this regard be followed scrupulously whilst conducting trials under the POCSO Act."

15. The discussion in the said decision of ***Atul Gorakhnath Ambale*** (supra) is squarely applicable to the present case.

16. Ms. Bhosale, learned APP, states that the prosecution is proposing to examine about 7 witnesses and effective steps will be taken for disposal of said Special Case (POCSO) No.87 of 2023 expeditiously. She states that the State of Maharashtra will ensure that the Applicant will be produced before the learned Trial Court on all the dates.

17. Accordingly, the Bail Application is disposed of by issuing following directions:-

(a) The Bail Application is rejected.

(b) The learned Trial Court is requested to complete the trial within a period of 6 months.

(c) The Respondent State of Maharashtra will ensure that the Applicant will be produced before the learned Trial Court on all the dates.

18. Accordingly, the Bail Application is dismissed, subject to above.

[MADHAV J. JAMDAR, J.]