

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 4033 OF 2023

Sunil Damu Umbarsanda ...Applicant

Versus

The State of Maharashtra & Anr. ...Respondents

WITH

BAIL APPLICATION NO. 2001 OF 2024

WITH

INTERIM APPLICATION NO. 682 OF 2024

IN

BAIL APPLICATION NO. 2001 OF 2024

Pintya @ Ramesh Subhash Padosha ...Applicant

Versus

The State of Maharashtra & Anr. ...Respondents

- Mr. Umesh S. Iyer i/b mr. Amresh Jadhav, for Applicant in BA/4033/2023.
- Mr. Mohammad S. Mulla, Applicant in BA/2001/2024.
- Mr. Sagar R. Agarkar, APP for respondent No.1. - State.
- Ms. Divya Singh, for Respondent No.2 (appointed by Legal Aid) in both applications.
- Mr. Ajit Sable, API, Wada Police Station, Palghar.

CORAM : MANISH PITALE, J.

DATE : 25th NOVEMBER, 2024.

P. C. :

1. In these applications, this Court was constrained to pass order dated 12th November, 2024, referring to an earlier order dated 18th October, 2024, calling upon the concerned Trial Court to take up the case in right earnest on the next date of listing that was 19th November, 2024, so as to ensure that the trial proceeds further.

2. This was in the backdrop of a contention raised on behalf of the

applicants that due to their non production before the Trial Court and other reasons for which the prosecution was responsible, the applicants have remained incarcerated for about 7 years and 6 months.

3. In the light of the order dated 12th November, 2024 passed by this Court, the learned APP has produced a report submitted by the Jailor of the concerned Jail, stating that from the year 2017, the applicants, who are accused Nos.1 and 2 were produced at least 29 times before the concerned Court. It was further asserted that on 19th November, 2024 and 22nd November, 2024, i.e. on the dates when the proceedings were listed before the aforesaid Trial Court, the applicants were indeed produced, but the proceedings were adjourned at their behest. It was submitted that the applicants cannot take advantage of their own wrong and then claim that this Court as a Constitutional Court ought to exercise powers to enlarge the applicants on bail.

4. The learned counsel appearing for respondent No.2 supported the contentions of the learned APP and submitted that no indulgence may be shown to the applicants in the present application.

5. On the other hand, the learned counsel for the applicants asserted that, but for the specific direction given by this Court in the orders dated 18th October, 2024 and 12th November, 2024, the proceedings before the Trial

Court had remained languishing and the applicants were not being produced before the Court, as a consequence of which, the recording of evidence could not commence and in the meanwhile the applicants remained incarcerated for the aforesaid long period of time. It was submitted that the present applications can be kept pending, while this Court may consider the manner in which the Trial Court proceeds in the pending trial.

6. Considering the report submitted by the Jailor to the learned APP, which is relied upon today, it appears that on substantial number of occasions, the applicants were indeed produced before the concerned Trial Court, but at the same time, it is to be noted that there have been occasions where the applicants were not produced before the Trial Court.

7. But, the contents of the *Roznama*, for the dates 19th November, 2024 and 22nd November, 2024, do show that there is some substance in the contention raised by the learned APP and the learned counsel appearing for respondent No.2. The contents of the *Roznama* of the aforesaid dates i.e. 19th November, 2024 and 22nd November, 2024, read as follows :

“Karande District Judge-2 and Addl Sessions Judge Bhiwandi
Case No.: **Spl. Cae Child Prot. / 296 / 2023** CNR Number : MHTH290019002023
State of Maharashtra Vs Pintya @ Ramesh Subhash Padosha
APP Advocate /

Today's Date	Roznama	Next/Disposal Date
19-11-2024	Before the court Accused no. 1 and 2 produced from taloja jail Accused no. 3 and 4 present Victim and A. P. P. present	

	Advocate for accused no. 1 and 2 absent Writ received from District court Exh. 94 Report unserved of warrant against accused no. 4 Exh. 95 V.P. filed for accused no. 4 Exh. 96 Application for warrant cancellation of accused no.4 Exh. 97 V.P. filed for accused no. 5 Exh. 98 Adjournment application of accused no. 1 and 2 for appointment of advocate (subject to witness bhatta) Exh. 99 Adjournment application of accused no. 3 and 2 due to unavailable of advocate (subject to witness bhatta) Exh. 100 Adjournment application of accused no. 4 (subject to witness bhatta) Adjourn for Heg\n\n\Case Adjourn for : Production of Accused sd/- D.J. 2, Bhiwandi	22-11-2024
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IN THE COURT OF Shri. N. K. KARANDE District Judge-2 and Addl
Sessions Judge Bhiwandi
Case No.: **Spl. Cae Child Prot. / 296 / 2023** CNR Number : MHTH290019002023
State of Maharashtra Vs Pintya @ Ramesh Subhash Padosha
APP Advocate /

Todays Date	Roznama	Next/Disposal Date
22-11-2024	Before the court Accused no. 1 and 2 produced from jail Accused no. 3 and 4 present Victim and A. P. P. present, Muddemal produced Advocate for accused no. 3 and 4 present accused no. 1 and 2 seeks adjournment to appoint advocate Exh. 101 Adjournment application filed by accused no. 1 and 2 (granted subject to witness bhatta) Court ask to accused no. 1 and 2 whether to provide advocate through legal aid, accused denied and submitted that they have private advocate to conduct the case Adjourn for hearing Case Adjourn for : Production of Accused sd/- D.J. 2, Bhiwandi	27-11-2024"

8. The above quoted contents show that while the applicants i.e. the accused Nos.1 and 2 were indeed produced from jail before the said Trial Court, they sought adjournment on the ground of appointing an advocate. In fact, on 22nd November, 2024, when the Court put a query to the applicants as to whether an advocate was to be provided through legal aid, the applicants denied and they submitted that they would have a private advocate to conduct the case on their behalf. The aforesaid contents give an impression to this Court that the applicants are also responsible for the delay in commencement of the recording of evidence before the Trial Court. They have refused to take legal aid and they have sought adjournment on the ground of engaging private advocate.

9. The bail applications of the applicants have been dismissed earlier on merits by the Sessions Court. On 12th October, 2022, when the earlier application of the applicant – Sunil Damu Umbarsanda was listed, this Court (Coram : Bharati Dangre, J.) had expressed disinclination to entertain the application and in that light the learned counsel appearing for the said applicant had sought permission to withdraw the application. While disposing of the application in that backdrop, this Court had indicated that the trial ought to be conducted expeditiously.

10. In this backdrop, this Court is not impressed with the contention

raised on behalf of the applicants that as a Constitutional Court, power ought to be exercised by this Court in favour of the applicants for being enlarged on bail. Nonetheless, it would be appropriate that specific directions are issued to the aforesaid Trial Court.

11. Accordingly, the instant bail applications are disposed of by directing the aforesaid Trial Court to take all necessary steps to record evidence of the victim at the earliest and without any delay. The applicants (accused Nos.1 and 2) shall fully cooperate with the said Trial Court to comply with the aforesaid direction. If they do not wish to have legal aid and they desire to appoint a private advocate, the same be done immediately, so that the process of recording of evidence of the victim can be completed at the earliest.

12. If the applicants abide by the aforesaid directions of cooperating in an effective manner with the concerned Trial Court, liberty is reserved for them to apply afresh for bail after recording of evidence of the victim.

13. It is made clear that the jail authority shall produce the applicants whenever the trial proceedings are listed before the aforesaid Court either physically or through video conferencing.

14. The interim application is also disposed of.

(MANISH PITALE, J.)