

**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 ... Respondent

**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/by Amresh Jadhav a/w Jitendra Jagtap,
Devendra Avhad, Maria Shaikh and Yashvi Jain for the Applicant
in BA/4033/2023.

Ms. M. S. Mulla for the Applicant in BA/2001/2024.

Mr. Sagar R. Agarkar, APP for Respondent-State.

Mr. Mahendra Pawar, Head Constable, Wada Police Station.

**CORAM: MANISH PITALE, J.
DATE : 12th NOVEMBER 2024**

P.C. :

. On 18th October 2024, while hearing the bail applications, this Court found that although the applicants do not appear to have case on merits for being enlarged on bail, having remained incarcerated for a period of about 7 years and 6 months, the prayer for bail is being pressed on that ground. After having taken

note of the said fact, this Court had observed in the said order as follows :

“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.”

2. Despite the aforesaid observations made in the order dated 18th October 2024, the learned counsel for the applicants informs

this Court that on 5th November 2024, no substantial progress has been made before the concerned Court i.e. District Judge-II and Additional Sessions Judge, Bhiwandi, where Special Case No. 296 of 2023 is pending. The *roznama* of the said date is brought to the notice of this Court, which reads as follows :-

“Before the court Accused no. 1 and 2 not produced from jail Accused no. 3 present Accused no. 4 absent Victim and A.P.P. present Advocate for accused absent Issue warrant against Issue warrant against accused no. 4 Exh. 93 Adjournment application by accused no. 3 (subject to witness batta) Adjourn for Heg”

3. The next date of listing before the aforesaid Court is 19th November 2024. It is a matter of serious concern that despite the direction issued by this Court in the above quoted portion of the order dated 18th October 2024, the Court of District Judge-II and Additional Sessions Judge, Bhiwandi, has adjourned the proceeding, perhaps because even on the said date, the accused Nos. 1 and 2 were not produced from jail.

4. In that light, the Jail Superintendent of the Taloja Central Prison is directed to ensure that on the next date of listing before the aforesaid Court i.e. 19th November 2024, accused Nos.1 and 2 i.e. the applicants herein are produced without fail. The prosecution shall ensure that the witnesses are present in Court, so that the matter can proceed further.

5. The learned APP submits that the order passed today, shall be communicated to the Jail Superintendent of the Taloja Central

Prison, forthwith, so that appropriate steps are taken in the matter.

6. The Court of District Judge-II and Additional Sessions Judge, Bhiwandi, where the Special Case No. 296 of 2023 is pending, is directed to take up the case on the next date of listing on 19th November 2024 in right earnest, so that the trial proceeds further.

7. The learned APP correctly points out that since this is case involving offences under the Protection of Children from Sexual Offences Act, 2012 also, there should be representation for the victim. Accordingly, the High Court Legal Services Committee is directed to appoint an Advocate from its panel to represent the victim. The applicants in both these applications are directed to serve the copy of papers pertaining to these applications with the office of the High Court Legal Services Committee within one week from today.

8. List for further consideration on 25th November 2024, at the top of the board.

MANISH PITALE, J.