



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION NO.1191 OF 2024
IN
CRIMINAL APPLICATION (BA) NO.504 OF 2024
(Rajesh s/o Niranjan Mahalle Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.D. Chopde, Advocate for the applicant.
Ms H.N. Prabhu, APP for the State.
Ms Gayatri Diwe, Advocate for Assist to Prosecutor.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 10, 2024.

By this application, the complainant seeks to file an intervention application on the ground that he want to oppose bail application by engaging the Counsel.

2. In view of the reasons mentioned in the application, the application is allowed.

CRIMINAL APPLICATION (BA) NO.504 OF 2024

By this application, the applicant is seeking bail. The applicant came to be arrested on 05/06/2023 in connection with Crime No.139/2023 registered with Police Station Asegaon, District Washim for the offence punishable under Sections 376(2)(I) and 323 read with Section 34 of the Indian Penal Code, 1860 and Sections 89 and 92(D) of the Rights of the Persons with Disabilities Act, 2016.

2. Learned Counsel for the applicant submitted that the accusation against the present applicant is on the basis of the statement of the victim who has alleged that she is deaf and dumb and also mentally retarded aged about 20 years was subjected for sexual assault by the present applicant as well as other co-accused.

3. It is submitted by the learned Counsel for the applicant that the applicant is falsely implicated in the alleged offence as the DNA report completely exonerates the present applicant. He submitted that as per the allegation of the victim, she was subjected for sexual assault by the applicant once and the other co-accused on multiple occasions which resulted into her pregnancy. The DNA samples of the present applicant as well as other co-accused and the victim and the foetus were referred for the analysis and DNA report is received. The DNA report exonerates the present applicant as a biological father of the foetus of the victim. He submitted that now investigation is already completed and charge-sheet is filed. Initial bail application was withdrawn with liberty to file after six months if there is no substantial progress in the trial. He submitted that though the applicant is arrested on 05/06/2023, within one year there is no progress in the trial. On the contrary, the charge is also not framed against the present applicant. The applicant cannot be kept behind bar for an indefinite period. He also placed reliance on the recent decision of the Hon'ble Apex Court in the case of *Javed Gulam Nabi Shaikh Vs. State of*

Maharashtra and anr. in Criminal Appeal No.2787/2024

decided on 03/07/2024 wherein it is observed by the Hon'ble Apex Court in para No.18 which reads as under :

“18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.”

4. The Hon'ble Apex Court further in para No.19 observes as under :

“19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

5. Learned APP strongly opposed the application on the ground that deaf and dumb and mentally retarded victim is subjected for sexual assault by the present applicant. If applicant/accused is released on bail, he would tamper with the prosecution evidence. She also submitted that there was an attempt by the relatives of the present applicant to tamper the prosecution evidence by pressurising victim as well as her relatives. In view of that, bail application deserves to be rejected.

6. Learned Counsel for the complainant also reiterated the said contentions and submitted that considering that deaf and dumb and mentally retarded girl is subjected for the sexual assault by the present applicant and thereafter there was an attempt to tamper the prosecution witnesses. Hence, the bail application deserves to be rejected.

7. In support of her contention, she placed reliance on ***Ms. Y Vs. State of Rajasthan and anr. [(2022) 3 S.C.R. 27]*** wherein parameters for grant of bail are considered by the Hon'ble Apex Court by referring the catena of decisions and it is held that the Apex Court has consistently upheld the necessity of reasoned bail orders, with a special emphasis on matters involving serious offences. In the present case, respondent no.2 accused has been accused of committing the grievous offence of rape against his young niece of nineteen years. The fact that

the respondent no.2 accused is a habitual offender and nearly twenty cases registered against him has not even found mentioned in the impugned order. Further the High Court has failed to consider the influence that the respondent no.2 accused may have over the prosecutrix as an elder family member. The period of imprisonment, being only three months, is not of such a magnitude as to push the Court towards granting bail in an offence of this nature and prays for rejection of the application.

8. I have heard learned Counsel for the both the parties. Perused the investigation papers. The FIR is lodged by the brother of the victim on an allegation that his sister is deaf and dumb and by taking disadvantage of the said fact in the absence of the family members she was subjected for sexual assault by the present applicant as well as other co-accused. On the basis of said report, police have registered the crime against the present applicant and other co-accused. The statement of the victim was recorded with the help of the Expert wherein she has specifically stated that the present applicant has subjected her for sexual assault once. During investigation, the Investigating Officer has also recorded the various statements and the victim was referred for medical examination. During medical examination, it revealed that the victim is pregnant of 5 months and thereafter the samples of the foetus as well as present applicant and other co-accused and victim were obtained and forwarded for the DNA examination. The DNA

examination report shows that the present applicant excluded to be the biological father of the foetus of the victim.

9. As far as the co-accused Om Shankar Pawar is concerned who was concluded to be the biological father of the conception of the victim. Thus, considering the submissions made by the learned Counsel for the applicant that even accepting the statement as it is, there is an allegation of the sexual assault by the present applicant once. Admittedly, she has not disclosed the said incident initially to any of the family members. The DNA report exonerates the present applicant to the extent of the sexual assault by the present applicant. He mainly placed reliance on the order passed by this Court wherein this Court has directed the Special Court to expedite the trial and decide within six months. The learned trial Court has not expedited the trial and there is absolutely no progress in the trial and on that ground he is seeking bail. As far as the observation of the Hon'ble Apex Court in respect of the speedy trial is concerned requires to be taken into consideration wherein there is a reference of Article 21 of the Constitution of India and it is specifically held by the Hon'ble Apex Court that Article 21 of the Constitution applies irrespective of the nature of the crime. At the same time, the consideration for grant of bail are to be looked into which are reiterated by the Hon'ble Apex Court in the judgment of Ms. Y Vs. State of Rajasthan and anr. (supra) relied upon by the learned Counsel for the

complainant. The Hon'ble Apex Court by referring the catena of decisions held that the factors to be borne in mind while considering an application for bail are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail.

10. In the light of the above observation of the Hon'ble Apex Court if the facts of the present case are taken into consideration, the victim has disclosed the name of the present applicant as well as one Gopal Ukanda Mahalle and the present applicant but both are exonerated in a DNA report. As far as the statement of the victim is concerned she has narrated the names of these two accused persons who are exonerated to the DNA report. On the contrary, the samples of one Om Pawar are collected during the investigation and he found to be concluded father or biological father of the foetus of the victim. Thus, the statement of the victim is not supported by the DNA report as far as the allegation against the present applicant is concerned. However, even considering the statement of the victim admittedly, the involvement of

the present applicant is in a grievous offence but considering there is no progress in the trial and in view of the observation of the Hon'ble Apex Court that it is the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution and inspite the directions given by this Court to decide the trial within six months, there is no progress in the trial, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

- (i) The application is allowed.
- (ii) The applicant – Rajesh s/o Niranjana Mahalle in connection with Crime No.139/2023 registered with Police Station Asegaon, District Washim for the offence punishable under Sections 376(2)(I) and 323 read with Section 34 of the Indian Penal Code, 1860 and Sections 89 and 92(D) of the Rights of the Persons with Disabilities Act, 2016, be released on bail on executing P.R. Bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall not enter into the village Dabhadi, Taluka Mangrulpir, District Washim till culmination of the trial.
- (iv) The applicant shall not in any manner communicate with the victim or her relatives

and shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

(v) The applicant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.

(vi) On contravention of any of the conditions would lead to cancellation of the bail.

11. The application is disposed of.

12. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)

**Divya*