



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

CRIMINAL APPEAL NO.591 OF 2024

Satish s/o Kesharaoji Bajait
Aged about 53 years,
Occupation – Service
R/o. Vaidya Layout, Arvi Naka,
Wardha, Tah. & District Wardha

...APPELLANT

VERSUS

1. State of Maharashtra,
through P.S.O., P.S. Sindi (Rly.)
Tahsil Wardha, District Wardha
2. Ms. XYZ
(In Crime No.25/2020 at P.S. Sindi (Rly.)
Tah. Wardha, District Wardha

...RESPONDENTS

Mr. P. Ghare, Advocate for the applicant.
Mr. H.D. Dubey, APP for the State.
Ms N.G. Choubey, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : OCTOBER 15, 2024.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel
for the parties.

2. This is an appeal under Section 14A of the Scheduled Caste
and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter

referred to as 'the Atrocities Act' for short) challenging the order dated 30/07/2020, whereby the District Judge-1 and Special Judge (POCSO Act), Wardha has rejected the bail application of the appellant bearing Misc. Criminal Application No.224/2020.

3. The appellant came to be arrested on 11/02/2020 in connection with Crime No.25/2020 registered with Police Station Sindi, District Wardha for the offence punishable under Sections 376AB, 376(2)(n), 376(2)(f) of the Indian Penal Code, 1860 and Sections 6 and 10 of the Protection of Children from Sexual Offences Act, 2012.

4. The crime is registered on the basis of report lodged by the victim herself aged about 8 years. It is alleged that she is studying in 2nd standard and present applicant is serving as a Head Master in her school and he used to call her in the last room in the school and used to subject her for the sexual assault as well as unnatural sexual assault. On the basis of the said report, police have registered the crime against the present applicant. During investigation, victim was referred for medical examination. The necessary statements are recorded and after completion of the investigation, charge-sheet is filed.

5. Learned Counsel for the appellant submitted that the present appeal is filed mainly on the ground of delay in conclusion of the

trial. The appellant is arrested on 11/02/2020 but there is no substantial progress in the trial through appellant is behind bar from last 4 years. He submitted that now material witnesses i.e. the victim, her mother and her friend are examined and the Medical Officer's chief examination is already recorded. Thus, material witnesses are already examined. Still the prosecution has cited 31 witnesses, and therefore, it would not conclude in a near future. Considering the inordinate delay in conclusion of the trial, the appellant cannot be kept behind bar for an indefinite period; hence, he be released on bail.

6. In support of his contention, he placed reliance on ***Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh in Criminal Appeal no. 2790 of 2024*** decided on 18th July, 2024 and orders of this Court in ***Criminal Application (BA) No.512/2024 (Sonusingh s/o Jitisingh Tak Vs. State of Maharashtra)*** decided on 09/07/2024, ***Criminal Application (BA) No. 429 of 2024 (Dattatray Shrikrushna Shejole Versus The State of Maharashtra)*** decided on 06/08/2024.

7. On the other hand, learned Additional Public Prosecutor strongly opposed the appeal and submitted that eight years girl was subjected for sexual assault by the present appellant. The contention of

the victim is substantiated by the other evidence also. In view of that, the appeal deserves to be rejected.

8. Learned Counsel for the victim also reiterated the same contentions and submitted that considering the nature of the offence, the application deserves to be rejected.

9. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that the allegation against the present appellant is that he has subjected the minor victim girl for sexual assault who is eight years of age. As far as the statement of the victim is concerned, which is recorded by the Investigating Officer as well as under Section 164 of Cr.PC. In both statements she is consistent as to the role of the present appellant. As far as the medical examination is concerned admittedly, no injuries are found on the person either on the genitals or on the anus of the victim but the opinion given by the Medical Officer is that the possibility of the sexual assault cannot be ruled out. Thus, as far as the statement of the victim and evidence adduced by her before the Court is concerned which shows the involvement of the present appellant. Present appeal is filed on the ground of delay. The certified copy of the Roznama placed on record and the submission made by the learned Counsel shows that the material witnesses i.e. the victim, her mother, friend of the victim and the panch

on the spot panchnama are already examined. The Medical Officer is under the cross-examination; however, the prosecution has cited 31 witnesses. Therefore, the submission of the learned Counsel that the trial would not be concluded in a near future has some substance. The Hon'ble Apex Court in the case of ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another (Criminal Appeal No.2787/2024 decided on 03.07.2024)*** observed as under :

“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.”

10. In ***Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh*** (supra), wherein also the issue regarding the speedy trial was considered by the Hon'ble Apex Court and it is held by the Apex Court that this Court thereafter proceeded to hold that Section 43D(5) of the UAP Act does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Long incarceration with the unlikelihood of the trial being completed in the near future is a good ground to grant bail.

11. In the present case also the appellant is behind the bar since 11/02/2020. From the certified copy of the roznama it reveals the trial was commenced but only 5 witnesses are examined. The trial is proceeding in a snail speed. Thus, in view of the observations made by the Hon'ble Apex Court, 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. Admittedly, the crime committed is serious but in view of the observations of the Hon'ble Supreme Court and in view of the Article 21 of the Constitution, the appellant cannot be kept behind the bar for indefinite period. In view of that, the appeal deserves to be allowed. Accordingly, I proceed to pass the following order :

(i) The appeal is allowed.

(ii) The order passed by the District Judge-1 and Special Judge (POCSO Act), Wardha in Misc. Criminal Application No.224/2020 dated 30/07/2020 rejecting the bail application of the appellant is hereby quashed and set aside.

(iii) The appellant - Satish s/o Kesharaoji Bajait in connection with Crime No.25/2020 registered with Police Station Sindi, District Wardha for the offence punishable under Sections 376AB, 376(2)(n), 376(2)(f) of the Indian Penal Code, 1860 and Sections 6 and 10 of the Protection of Children from Sexual Offences Act, 2012, be released on bail on executing PR. Bond of Rs.50,000/- with one solvent surety in the like amount.

(iv) The appellant shall not enter into the vicinity of village Bhosa, Taluka Samudrapur, District Wardha, till the culmination of the trial.

(v) The appellant shall attend the concerned police Station as and when required for the investigation purpose and shall cooperate with the investigating agency.

(vi) The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case either physically or through electronic media.

(vii) The appellant shall attend the proceeding before the learned Special Court without seeking any exemption unless there are exceptional circumstances.

(viii) The contravention of any of the condition imposed by this Court would lead to cancellation of bail.

12. The appeal is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*