



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

**CRIMINAL APPLICATION (BA) NO.1135 OF 2024**

(Israr @ Takalya @ Mobin Muktar Shaikh Vs. State of Maharashtra)

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

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Mr. R.M. Daga, Advocate for the applicant.  
Mr. K.R. Lule, APP for the State.

**CORAM:- URMILA JOSHI-PHALKE, J.**  
**DATED :- DECEMBER 12, 2024.**

Heard.

2. By this application, the applicant is seeking bail as he came to be arrested on 24.04.2021 in connection with Crime No.148/2021 registered with police station Rajapeth, Amravati for the offence punishable under Sections 363, 364(A), 120(B), 212 and 201 of the Indian Penal Code and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

3. The crime is registered on the basis of report lodged on an allegation that on 17.02.2021 at around 08:00 p.m., one child namely, Master Nayan Mukesh Luniya aged about 4 years was kidnapped from the custody of his grandmother Smt. Monika Jaswantraj Luniya by one unknown male and female by taking him on their motorcycle in front of the gate of Sharda Nagar Garden situated near Latebai School, Amravati and the report was by Shri Mahendra Shriramji Watankar who was

working with Shri. Jaswanraj Luniya, who is the Grandfather of the abducted child. During investigation the involvement of the present applicant is revealed in the incident, and therefore, crime is registered against him.

4. Learned Counsel for the applicant submitted that the present application is filed by him on the ground that there is delay in trial. He submitted that the last witness is examined by the prosecution on 08.04.2024 and thereafter no steps are taken by the prosecution to secure the presence of the witnesses despite repeated opportunities are given. He submitted that the roznama which is placed on record sufficiently shows that on various occasions the opportunity was granted to the prosecution to take steps; however, the prosecution has not taken steps and not secure the presence of the witnesses. He invited my attention towards the roznama dated 08.04.2024, 20.04.2024, 15.07.2024, 02.07.2024, 19.06.2024, 06.06.2024 and so on and submitted that within eight months not a single application is filed by the prosecutor to secure the presence of the witnesses and the applicant is languishing in jail without progress in the trial. He placed reliance on *Javed Gulam Nabi Sheikh Vs. State of Maharashtra and another [2024 SCC OnLine SC 1693]* and *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh in Criminal Appeal No. 2790/2024 decided on 18.07.2024* as well as *'X' Vs. State of Rajasthan & Anr. [Special Leave Petition (Criminal) No. 13378 of 2024] dated 27.11.2024*.

5. Learned Counsel for the applicant submitted that in all these decisions the Hon'ble Apex Court has considered the right of the present applicant as to the speedy trial in view of Article 21 of the Constitution and submitted that there is inaction on the part of the prosecution, and therefore, the applicant be released on bail.

6. Learned APP strongly opposed the said application and submitted that considering the nature of the offence as well as there is criminal antecedents against the present applicant, the application deserves to be rejected. He further submitted that admittedly no steps are taken by the prosecutors but considering the material witnesses are already examined and the trial can be concluded within short span of time, the application deserves to be rejected.

7. I have heard learned Counsel for both the parties. Perused the investigation papers. As far as the involvement of the present applicant is concerned which revealed from the investigation papers. Thus, as far as merits is concerned, there is a *prima facie* evidence to connect the present applicant with the alleged offence; however, the present application is filed mainly on the ground that there is a delay in trial and there is inaction on the part of the prosecutor to secure the presence of the witnesses. The contention raised by the learned Counsel for the applicant is supported by the roznama which is

placed on record. The roznama shows that within eight months no steps are taken by the prosecutor to secure the presence of the witnesses. It is complete inaction on the part of the prosecutor who has not taken steps either to secure the presence of the witnesses or to proceed with the trial. This practice of the prosecutor is to be deprecated, and therefore, it is required to communicate this order to the Director of prosecution. As far as delay in trial is concerned there is consistent view taken by the Hon'ble Apex Court that :

*“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.”*

8. In recent order passed by the Hon'ble Apex Court in the case of '***X*** Vs. ***State of Rajasthan & Anr.*** [***Special Leave Petition (Criminal) No. 13378 of 2024***] ***dated 27.11.2024*** wherein also this aspect is considered and it is observed that it is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.

9. 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 22 witnesses are already examined by the prosecution but within eight months no steps are taken by the prosecution. From the perusal of the roznama shows that even the Court has not taken any active steps to secure the presence of the witnesses by giving any direction to the prosecutor to secure the presence of the witnesses and there is gross inaction on the part of the concerned prosecutor who failed to secure the presence of the witnesses. It is the duty of every Court to protect the right of the accused as far as the aspect of the speedy trial is concerned. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The applicant – Israr @ Takalya @ Mobin Muktar Shaikh in connection with Crime No.148/2021 registered with police station Rajapeth, Amravati for the offence punishable under Sections 363, 364(A), 120(B), 212 and 201 of the Indian Penal Code and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015, be released on bail on executing P.R. bond of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the proceedings before the Sessions Court without seeking any exemption unless there are exceptional circumstances and cooperate with the Court to proceed with the trial.

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case either personally or by way of electronic media.

(v) The applicant shall not indulge himself in similar type of the activities, if accused is found involved in similar type of the activities the bail granted to him deserves to be cancelled.

10. The application is disposed of.

11. The order be communicated to the Director of Prosecution.

**(URMILA JOSHI-PHALKE, J.)**

*\*Divya*