



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 BAIL APPLICATION NO. 2258 OF 2024

Jaywant Murli Chavan

VERSUS

The State Of Maharashtra And Another

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Advocate for Applicant : Mr. S.S. Rathi

APP for Respondents: Mr. V S Badakh

Advocate for Respondent 2 (appointed) : Ms Sumedha Thombre

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : January 22, 2025

PER COURT :-

1. This is successive bail application of the applicant. His previous bail application no.1906 of 2023 was rejected by this Court vide order dated 9.11.2023. Thereafter, applicant had moved application before Special Court for grant of bail below exhibit 15 in Special Case No.106 of 2023, which came to be rejected vide order dated 19.1.2024.

2. Present application is moved for grant of bail on the ground that there is no progress in the trial and applicant has suffered incarceration for more than 18 months, whereas maximum punishment prescribed for the alleged offence is five years.

3. The offence is registered on the basis of information given by respondent no.2/victim stating that previously crime no.77 of 2023 has been registered against the applicant for the offence punishable under section 376(2), 324, 504, 506 of the IPC and section 4, 8 and 12 of the Protection of Children From Sexual Offences Act, 2012 (for short POCSO). The applicant was arrested in that crime but enlarged on conditional bail. While he was on bail, on 8.7.2023 at about 4 p.m. applicant alleged to have abused the victim in filthy language and insisted for withdrawal of the prosecution initiated against him. He has further threatened to rape on her. Thereafter, he outraged modesty of the victim. The applicant alleged to have assaulted victim's mother and younger sister. Consequently, present crime no.93 of 2023 has been registered against him for the offence under sections 354, 354-A, 452, 324, 337, 323, 294, 506 r/w 34 of the IPC and section 12 of the POCSO Act, 2012.

4. While dealing with previous bail application of the applicant, this Court observed that applicant has flouted conditions of bail imposed upon him while releasing in

previous offence i.e. Crime No.77 of 2022 and possibility of recurrence of the similar offence cannot be ruled out.

5. Mr. S.S. Rathi, learned advocate appearing for the applicant would submit that looking to the offences alleged in this crime, maximum punishment that can be imposed is five years Rigorous Imprisonment. He points out that after filing of the charge-sheet, charge is framed sometimes in the month of November, 2023 and till this date trial stands still. Upon specific instructions, he submits that matter is still at the stage of Muddemal. According to him, prosecution has not taken requisite steps for commencement of the trial. Possibility of protracting the trial cannot be ruled out. He would point out that the applicant has already undergone incarceration for 17 months. His right to speedy trial guaranteed under Article 21 of the Constitution of India has been infringed. He would therefore urge to release the applicant on bail.

6. Mr. V.S. Badakh, learned APP and Ms. Sumedha Thombre, learned advocate appearing for respondent no.2 vehemently opposed the bail application contending that previous bail application has been rejected on merit. The applicant is likely to pressurize the witnesses. According to

them, recurrence of the similar offence cannot be ruled out looking to the previous conduct of the applicant. They would submit that trial can be expedited in such case instead of releasing the applicant on bail.

7. Having considered the submissions advanced, apparently, applicant has been arrested pursuant to registration of the crime no.93 of 2023 on 9.7.2023. His previous bail application has been rejected by this Court on 9.11.2023. Apparently, applicant is behind bar for about 17 months by this time. As informed by Mr. Rathi, learned counsel appearing for the applicant, charge is framed sometimes in November, 2023, but there is no progress in the trial and it is still at the stage of Muddemal. It is unfortunate to observe that prosecution is not vigilant in conducting the trial. Looking to the allegations in the FIR, so-called Muddemal may not be that relevant, however, same is not produced till this date before the Sessions Court for the reasons well known to the prosecution. Looking to the offences as charged, maximum punishment for five years is provided for largest charged offence under section 354 of the IPC. Therefore, further incarceration of the applicant would

definitely result into violation of fundamental right guaranteed under Article 21 of the Constitution of India. Nothing is brought before this Court to show that applicant is responsible for protracting the trial. At this stage, reference can be given to observations of the Supreme Court in case of **Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Another** (Criminal Appeal No.2787/2024) dated 03.07.2024, which reads 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.”

8. Recently, the Supreme Court of India in case of **Sangram Sadashiv Suryavanshi Vs. The State of Maharashtra** (in Criminal Appeal No.4758 of 2024 decided on 25.11.2024) observed that directions to expedite the trial can be issued in exceptional circumstances. Constitutional Court should refrain from fixing a time bound schedule before any other Courts. In case, trial court is not likely to conclude the trial in reasonable time, accused can be enlarged on bail which is settled rule and

jail is an exception. In the present case, looking to the maximum punishment prescribed for alleged offences and period of incarceration of applicant for more than 17 months and stage of the trial, further incarceration of the applicant cannot be permitted. On this ground only, application deserves to be allowed. Consequently, following order is passed.

ORDER

- i. Bail application no.2258 of 2024 is allowed.
- ii. The applicant -Jaywant Murli Chavan be released on bail in connection with crime no.93 of 2023 registered with Bamani Police Station, District Parbhani for the offences punishable under sections 354, 354-A, 452, 324, 337, 323, 294, 506 r/w 34 of the IPC and section 12 of the POCSO Act, 2012 on his furnishing PB. and S.B. of Rs.50,000/- (Rs. Fifty Thousand) each on following conditions that :-
 - a] The applicant shall not tamper with the prosecution evidence in any manner.
 - b] The applicant shall not enter Jintur Taluka till disposal of Special Case No.106 of 2023 pending before the Special/Additional Special Judge, Parbhani.
 - c] The applicant shall attend each and every date fixed before Special Court unless specifically exempted and co-operate for early disposal of the trial.

- iii. Since Ms. Thombre, learned advocate is appointed through Legal-Aid, to represent respondent no.2, her remuneration shall be paid as per Rules.
- iv. Application stands **disposed of**.

(S. G. CHAPALGAONKAR, J.)

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