

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1328 OF 2024

Bibhishan Ganpat Deshmukh

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondent

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- Ms. Falguni Brahmbhatt a/w. Mr. Abdul Kader, Advocates for Applicant.
- Mr. R. M. Pethe, APP for Respondent No.1 – State.
- Ms. Ashwini Achari, Appointed Advocate for Respondent No.2.
- Mr. Nitin Kamble, PSI Amboli Police Station present.

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 02, 2025.

P.C.:

1. Heard Ms. Brahmbhatt, learned appointed Advocate for Applicant; Mr. Pethe learned APP for Respondent No.1 – State and Ms. Achari, learned appointed Advocate for Respondent No.2.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 (for short “**CrPC.**”) seeking Regular Bail in connection with C.R. No.40 of 2016 registered with Amboli Police Station for offences under Sections 376, 511 and 506 of the Indian Penal Code, 1860 (for short “**IPC**”) readwith Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short “**POCSO Act**”). Applicant is sole accused and is incarcerated since

11.02.2016 i.e. 9 years, 2 months and 22 days pending trial.

3. Briefly stated, prosecution case is that Applicant who is maternal uncle of prosecutrix aged 10 years outraged her modesty by sexually assaulting her.

4. Ms. Brahmbhatt, learned appointed Advocate through the Legal-aid for Applicant would urge to the Court to consider the Application solely on the ground of long incarceration of Applicant of 9 years, 2 months and 22 days without any possibility of completion of trial in the near foreseeable future. She has placed on record order dated 08.01.2025 whereby charge against Applicant has been altered by trial Court on Application filed by prosecution under Section 216 of the CrPC to offences under sections 376 and 506 of the IPC readwith Section 6 of the POCSO Act. Next, she has placed on record roznama of Trial Court and would submit that the trial is prolonging and protracting for no dereliction on part of Applicant but on the part of prosecution. She would submit that considering the facet of long incarceration coupled with the snail pace of trial Applicant be released on bail.

5. Mr. Pethe, learned APP and Ms. Achari, learned appointed Advocate for Respondent No.2 would vehemently oppose the Bail Application and would submit that nexus between Applicant and prosecutrix is something which needs consideration of Court. They

would submit that first informant – mother of prosecutrix trusted Applicant to take care of her daughter in her absence however the Applicant eroded that trust and committed a serious act which would scar tender mind of prosecutrix. They would submit that there is possibility of Applicant tampering with evidence and influencing witnesses in the event if he is enlarged on bail considering nexus and relationship between parties. However considering the facet of long incarceration of Applicant pending trial, both learned Advocates would fairly urge the Court to pass appropriate orders as deemed fit.

6. With the able assistance of the learned Advocates at the bar, I have perused the record of the case.

7. The only reason which impels me to consider the present Bail Application is the long pre-trial incarceration of Applicant of 9 years, 2 months and 22 days without any possibility of the trial being completed in the near foreseeable future. Perusal of roznama reveals that Applicant is not even produced before the Trial Court from jail on several dates and hence dereliction on part of prosecution is *prima facie* evident on the face of record. Time and again this Court has taken the view that an undertrial – accused cannot be kept languishing behind bars for an indefinite period of time without trial reaching its logical end.

8. It is seen that while dealing with Bail Applications the material available for consideration and adjudication is limited. It is brought to the notice of the Court that trials are taking perpetuity to conclude and prisons are also simultaneously overcrowded in some segments. This Court regularly deals with Bail Applications of under-trials who have been in custody for long period and is also equally aware of the conditions of our prisons. To give an example in the city of Mumbai, recently in one of the cases before me, a Report dated 12.12.2024 made by the Superintendent of Mumbai Central Prison addressed to the Chief Government Pleader was placed before me by the Public Prosecutor which stated that the Mumbai Central Prison (Arthur Road Jail) is overcrowded beyond its sanctioned capacity by more than 5 – 6 times and every barrack sanctioned to house 50 inmates as on date houses anywhere between 220 – 250 inmates. Such an incongruity leads us to answer the Question: ***“How can Courts find a balance between the two polarities?”***

9. Argued before me is a case concerning liberty of an under-trial who has been incarcerated for 9 years, 2 months and 22 days, a situation impacting the right of under-trial conferred by Article 21 of Constitution to speedy justice as also personal liberty. In so far as the power of High Court to grant bail is concerned, when the case is such that involves a question of personal liberty of an under-trial who is incarcerated for a very long period, the powers are wide and

unfettered by conditions, the principle rule being that bail is the rule and refusal is the exception, allowing accused persons to better prepare their defence should be applied.

10. In so far as offence punishable under Section 6 of POCSO Act (special law) is concerned, it may be stated that the provisions of this law are, though, stringent in nature, it would not deter the Court to grant or refuse bail in order to secure the ends of justice more so when the Applicant – Accused is in jail for 9 years, 2 months and 22 days without trial reaching its logical end.

11. The Supreme Court in a plethora of judgements has discussed the rights conferred by Article 21 *qua* grant of bail and that such rights cannot be taken away unless the procedure is reasonable and fair and in cases where there is unreasonable delay in trial it would undoubtedly impact the rights of an under-trial. Some of the important decisions of the Supreme Court and some of the High Courts are discussed herein under:-

11.1. In the landmark judgement of *Maneka Gandhi Vs. Union of India*¹, the Supreme Court held that the right to life and personal liberty under Article 21 is not limited to mere physical existence but includes the right to live with dignity. The court emphasized that the procedure established by law must be fair, just, and reasonable, and it

¹ 1978 (1) SCC 248

cannot be arbitrary, oppressive, or unreasonable.

11.2. In the case of *Hussainara Khatoon Vs. Home Secy., State of Bihar*² the Supreme Court held as under:-

“Now obviously procedure prescribed by law for depriving a person of liberty cannot be “reasonable, fair or just” unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as “reasonable, fair or just” and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21.”

11.3. The Supreme Court in the case of *Shaheen Welfare Association Vs. Union Of India*³ dealing with a Public Interest Litigation seeking relief for under-trial prisoners charged under the Terrorist and Disruptive Activities (Prevention) Act, 1987 due to gross delay in disposal of cases qua Article 21 of the Constitution of India held as under:-

“10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh’s case (supra), on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.”

² (1980) 1 SCC 81

³ 1996 SCC (2) 616

11.4. The Supreme Court in the case of *Union of India v. K. A. Najeer*⁴ while commenting upon the possibility of early completion of trial and extended incarceration held as under:-

“18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.”

12. Applicant in present case has been in custody for 9 years, 2 months and 22 days. There is no possibility of the trial concluding in the near foreseeable future. Detaining an under-trial prisoner for such an extended period further violates his fundamental right to speedy trial flowing from Article 21 of the Constitution. At this juncture, I deem it appropriate to list certain observations of the Supreme Court shedding light on concerns underlying the “Right to speedy trial” from the point of view of an accused in custody whose liberty is affected. In the case of *Abdul Rehman Antulay & Ors. Vs R.S. Nayak & Anr.*⁵ the Supreme Court held as under:-

⁴ Criminal Appeal No. 98 of 2021

⁵ 1992 (1) SCC 225

“86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the Right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

(4) – (11) -----x-----” (emphasis supplied)

13. The Supreme Court has also held in a series of judgements and orders that in situations where the under-trial-prisoner / accused persons have suffered incarceration rather long incarceration for a considerable period of time and there is no possibility of the trial being completed within the foreseeable future, Constitutional Courts can exercise power to release the accused under-trial on bail, as bail is the rule and jail is the exception.

14. In the case of *Supreme Court Legal Aid Committee (Representing undertrial prisoners) Vs. Union of India*⁶, the Supreme Court has held that:-

“17. We are conscious of the fact that the menace of drug trafficking has to be controlled by providing stringent punishments and those who indulge in such nefarious activities do not deserve any sympathy. But at the same time we cannot be oblivious to the fact that many innocent persons may also be languishing in jails if we recall to mind the percentage of acquittals. Since harsh punishments have been provided for under the Act, the percentage of disposals on plea of guilt is bound to be small; the State Government should, therefore, have realised the need for setting up sufficient number of Special Courts immediately after the amendment of the Act by Amendment Act 2 of 1989. Even after the Division Bench of the Bombay High Court refused to grant en bloc enlargement on bail on 1-2-1993 in Criminal Application No. 3480 of 1992 and B.D. Criminal No. 565 of 1992, no substantial improvement in the pendency is shown since new cases continue to pour in, and, therefore, a one-time exercise has become imperative to place the system on an even keel. We also recommend to the State Government to set up Review Committees headed by a Judicial Officer, preferably a retired High Court Judge, with one or two other members to review the cases of undertrials who have been in jail for long including those released under this order and to recommend to the State Government which of the cases deserve withdrawal. The State Government can then advise the Public Prosecutor to move the court for withdrawal of such cases. This will not only help reduce the pendency but will also increase the credibility of the prosecuting agency. After giving effect to this order the Special Court may consider giving priority to cases of those undertrials who continue in jail despite this order on account of their inability to furnish bail.”

15. This Court in the case of *Ganesh Madhukar Mendarkar (supra)* while referring to an article dated 01.05.2018 “*How prison changes people*”⁷ written by Dr. Christian Jarret, Editor of British Psychological Society's Research Digest published on BBC discussed the negative effects on a person's mental and physical health due to long

⁶ (1995) 4 SCC 695

⁷ Available at <https://www.bbc.com/future/article/20180430-the-unexpected-ways-prison-time-changes-people>

incarceration and granted bail to the Accused who suffered incarceration of more than 9 years in a matter under 302 of IPC.

Paragraph No.29 of the judgment is relevant and reads as under:-

“29. In view of the above decisions and considering the long incarceration of the Applicant, I would like to highlight one more important issue which persuades me to consider the present case and that is the effect of long incarceration. Long incarceration can have many negative effects on a person's mental and physical health. Long incarceration can lead to post-incarceration syndrome which can include depression, anxiety and poor self-esteem. It can promote unhealthy behaviours like drug abuse. Inmates face social stigma which can disrupt relationships with family and friends. Incarceration persons often suffer long-term consequences from having been subjected to pain, deprivation and extremely atypical patterns and norms of living and interacting with others. Prima facie incarceration rather long incarceration exposes under-trial accused to carceral environment which can be inherently damaging to the mental health of the under-trial accused coupled with the appalling conditions in the prisons. Researchers have even theorized that incarceration can lead to Post-Incarceration Syndrome, a syndrome similar to PTSD.”

16. Considering the above judicial pronouncements *vis-a-vis* his long incarceration of 9 years, 2 months and 22 days pending trial, in my opinion solely on that ground, Applicant before me has made out a case for grant of bail. Apprehension expressed by prosecution can be addressed by imposing stringent conditions. Needless to state that complicity of the Applicant shall be proved in the trial.

17. Bail Application stands allowed subject to the following conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs.15,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.15,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

- (vi) Applicant shall not make any attempts to re-associate with the prosecutrix in any manner either through a device or in-person and shall not reside in the jurisdiction of the Police Station wherein the prosecutrix is residing until the trial is concluded. Investigating Officer shall specifically ensure that this condition is followed;
- (vii) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (viii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (ix) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (x) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

18. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any

observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

19. Fees of Ms. Brahmbhatt, learned Advocate appointed through Legal Aid to represent and espouse the cause of Applicant and Ms. Achari, learned Advocate appointed to represent and espouse the cause of Respondent No.2 shall be released by the Registry of this Court within a period of one week from the date of presentation of a server copy of this order on compliance.

20. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay