

Ajay

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

CRIMINAL BAIL APPLICATION NO. 1490 OF 2024

Dhammapal @ Dhamma Kailas More	.. Applicant
Versus	
The State of Maharashtra & Anr.	.. Respondents

**WITH
CRIMINAL BAIL APPLICATION NO. 1408 OF 2024**

Mohd. Firoj Hasim Shaikh	.. Applicant
Versus	
The State of Maharashtra & Anr.	.. Respondents

**WITH
CRIMINAL BAIL APPLICATION NO. 2018 OF 2024**

Madhura Manruram Gupta	.. Applicant
Versus	
The State of Maharashtra & Anr.	.. Respondents

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- Mr. Anil J. Jadhav, Advocate for Applicant in BA No.1490 of 2024.
 - Mr. Shaikh Asif Ali a/w. Mr. S.K. Ali and Ms. Shabi Fatima i./by A.A. Siddiquie & Associates for Applicant in BA No.1408 of 2024.
 - Mr. Vinod Thekkara, Advocate for Applicant in BA No.2018 of 2024.
 - Mr. Dinesh J. Haldankar, APP for Respondent – State in BA No.1490 of 2024 and BA No.1408 of 2024.
 - Mr. B.B. Kulkarni, APP for Respondent – State in BA No.2018 of 2024.
 - Ms. Samridhi Lodha, Advocate for Respondent No.2 in BA No.1490 of 2024 and BA No.1408 of 2024.
 - Mr. Pavan S. Patil a/w. Mr. Shubham Saraf, Mr. Shubhankar Kulkarni and Mr. Dewang Mhatre, Advocates for Respondent No.2 in BA No.2018 of 2024.
 - Mr. P.S. Sanap, Police Inspector, Parksite Police Station present.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 06, 2025.

P.C.:

1. Heard Mr. Jadhav, learned Advocate for Applicant in Bail Application No.1490 of 2024; Mr. Shaikh, learned Advocate for Applicant in Bail Application No.1408 of 2024; Mr. Thekkara, learned Advocate for Applicant in Bail Application No.2018 of 2024; Mr. Haldankar, learned APP for Respondent – State in Bail Application No.1490 of 2024 and Bail Application No. 1408 of 2024; Mr. Kulkarni, learned APP for Respondent – State in Bail Application No.2018 of 2024; Ms. Lodha, learned Advocate for Respondent No.2 in Bail Application No.1490 of 2024 and Bail Application No. 1408 of 2024 and Mr. Patil, learned Advocate for Respondent No.2 in Bail Application No.2018 of 2024.

2. All three Bail Applications are decided by this common order since First Informant is common in all three Applications as also period of occurrence of the alleged offences in all three Applications is overlapping each other and most importantly indictment of all three Applicants before me is under identical Sections of the Indian Penal Code, 1860 read with the Protection of Children from Sexual Offences Act, 2012.

BAIL APPLICATION NO. 1490 OF 2024

3. Bail Application No.1490 of 2024 is filed by Applicant – Dhammapal @ Dhamma Kailas More who is arraigned as Accused in FIR No.449 of 2023 dated 12.07.2023 registered with Parksite Police Station for offences under Sections 376(2)(n) and 506 of the Indian Penal Code, 1860 read with Sections 4(2), 5(l) and 6 of the Protection of Children from Sexual Offences Act, 2012. Applicant herein is incarcerated since 12.07.2023.

4. In this Application, statement of First Informant is appended at page No.30 of the Application. Briefly stated, First Informant who was aged 15 years at the time of registration of the FIR has stated that she was acquainted with the Applicant for past 10 years as he used to help her family members and since past two years i.e. since 2021, Applicant who is a auto-rickshaw driver induced and threatened her to accompany him to several locations and outraged her modesty by establishing physical relationship repeatedly without her consent. Details of visit to various places where she accompanied the Accused are stated.

5. Mr. Jadhav, learned Advocate for Applicant would submit that Applicant has been falsely indicted in the case and he would draw my attention to the history narrated by Applicant at the time of his medical examination on 17.07.2023 which is at page No.117 of the

Application and would submit that Applicant was not on good terms with First Informant's relatives as her uncle was arrested in May 2023 for a crime under the provisions of the Maharashtra Control of Organized Crimes Act, 1999 to which present Applicant is an eye-witness and hence the delay in filing of the FIR after a period of two years creates a shadow of doubt on the veracity of the case of the First Informant. He would submit that there is no cogent reason stated by the First Informant for remaining silent for almost 2 years prior to lodging the FIR when she herself has voluntarily accompanied the Applicant to several places and has had physical relationship.

BAIL APPLICATION NO. 1408 OF 2024

6. Bail Application No.1408 of 2024 is filed by Applicant Mohd. Firoj Hasim Shaikh who is arraigned as Accused in FIR No.460 of 2023 dated 17.07.2023 registered with Parksite Police Station for offences under Sections 354-A, 376(2)(n) and 506 of the Indian Penal Code, 1860 read with Sections 4(2), 5(l), 6 and 12 of the Protection of Children from Sexual Offences Act, 2012. Applicant herein is incarcerated since 17.07.2023.

7. In this Application, the statement of First Informant is at page No.29 of the Application. Briefly stated, First Informant who was aged 15 years at the time of registration of the FIR has vividly described the Applicant in her statement since he is a Tailor by

profession who would stitch and alter her and her family member's clothes. First Informant has stated that sometime in June 2023, on one of her visit to his tailoring shop Applicant outraged her modesty as also forcefully established physical relations with her inside his shop repeatedly thereafter on several occasions but since she was afraid to disclose the episodes occurred with Dhammapal @ Dhamma Kailas More (Applicant in Bail Application No.1490 of 2023), she was cowed down by the threats given by Applicant in this case and hence submitted to his demands. At one instance, First Informant has stated that Applicant paid her Rs.200/- after ravishing her modesty and she took the same and went home.

8. Mr. Shaikh, learned Advocate for Applicant would submit that Applicant has been falsely indicted in the offence and has drawn my attention to the defence of Applicant and history narrated by Applicant at the time of his medical examination which is at page No.71 of the Application to submit that the incidents alleged in the FIR by First Informant were consensual in nature and the First Informant demanded amount of Rs.300/- from him after the incident but however Applicant paid Rs.250/- to her. Though there is dichotomy with regard to the amount paid and received the version of the incident as narrated by the First Informant and the Applicant is proven to the extent of exchange of money between Applicant and First Informant. Quietus of the First Informant is pleaded as defence by

Applicant.

BAIL APPLICATION NO. 2018 OF 2024

9. Bail Application No.2018 of 2024 is filed by Applicant – Madhura Manruram Gupta who is arraigned as Accused in FIR No.459 of 2023 dated 17.07.2023 registered with Parksite Police Station for offences under Section 376(2)(n) of the Indian Penal Code, 1860 read with Sections 5(a), 5(f) and 6 of the Protection of Children from Sexual Offences Act, 2012. Applicant herein is incarcerated since 17.07.2023.

10. In this Application, statement of First Informant is appended at page No.26 of the Application. Briefly stated, First Informant who was aged 15 years at the time of registration of the FIR has stated that in sometime in June 2023, Applicant who is a vegetable vendor in her area invited her to his home under the pretext of meeting his daughter and when she went to his home, Applicant forcefully established physical relationship with her and gave her Rs.200/-. First Informant states that on 3 to 4 occasions, Applicant called her to his home, forcefully assaulted her and each time gave her Rs.200/- which she accepted and left.

11. Once again, defence taken by the present Applicant is that of a consensual relationship. Mr. Thekkara, learned Advocate for Applicant has relied on the statement of the First Informant recorded

under Section 164 of the Code of Criminal Procedure, 1973 wherein she has tried to improve her case by stating that she visited the house of Applicant under some or the other pretext where he committed sexual assault on her. In the said 164 statement, First Informant has remained silent on the aspect of acceptance of any amount by her. *Prima facie* it is seen that there is serious material contradiction in the version of First Informant in her statement (FIR) recorded by the police *vis-a-vis* her Section 164 statement and hence the same *prima facie* fails to inspire confidence in the prosecution case.

12. Learned Advocates for Applicants in all three Bail Applications have placed before me details of a 4th FIR No.490 of 2023 dated 02.08.2023 registered with Parksite Police Station by First Informant against Accused Bhima Lakappa Dudhale for similar offences under Sections 376(2)(j) and 506 of the Indian Penal Code, 1860 read with Section 4(2) of the Protection of Children from Sexual Offences Act, 2012. They have also placed before me the fact that this entire episode came to light when First Informant became pregnant and hence Complaint was filed against Applicants herein. They would submit that when DNA test of all Applicants and the 4th Accused namely Bhima Lakappa Dudhale was conducted with the foetus, the test of 4th Accused namely Bhima Lakappa Dudhale was declared as positive. They would also submit that only when a local politician addressed a letter to the police station to take cognizance of the

complaint, the aforementioned FIRs came to be registered owing to pressure tactics. They would submit that there is a significant delay in lodging of the FIR by Complainant and investigation in all FIRs has been completed and charge-sheet has been filed before the Special Court. They would also urge the Court to consider the long incarceration of Applicants of almost 1 year 6 months and pray for their release on terms and conditions as deemed fit by the Court.

13. Ms. Lodha, learned Advocate has been appointed by the Legal Aid Committee to espouse the cause of Respondent No.2 in Bail Application No.1490 of 2024 and Bail Application No. 1408 of 2024. Mr. Patil, learned Advocate has been appointed by the Legal Aid Committee to espouse the cause of Respondent No.2 in Bail Application No.2018 of 2024. Both their submissions are taken together for the sake of brevity.

13.1. Ms. Lodha would submit that First Informant was merely 13 year old when the 1st incident with Accused Dhammapal @ Dhamma Kailas More occurred and at that time she was not of understanding age. She would submit that First Informant is an orphan residing with her grand-mother, maternal uncle and his family and has studied upto IX standard only at that time and hence was clearly unaware about the consequences of the acts committed by Accused Dhammapal @ Dhamma Kailas More. She would submit that First Informant

maintained a quietus for two years and suffered the consequences which cannot be held against her.

13.2. She has referred to and relied upon the decisions of the Supreme Court in the case of *State of Jharkhand Vs. Anil Ganju*¹ and *X. Vs. State of Rajasthan and Anr.*² to contend that releasing the Applicants on bail in such serious offences would not only jeopardise the trial but also be unsafe for the First Informant. She would submit that in the case of *State of Jharkhand (supra)*, the Supreme Court while referring to its decision in the case of *Mahipal Vs. Rajesh Kumar @ Polia*³ has held that wherever serious crimes are involved against society at large, Courts should maintain an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case and urge the Court to reject the Bail Applications.

14. In addition to the above, Mr. Patil has stated that considering the age of First Informant it is clear that she was a victim of circumstances and hence the same cannot be held against her. He would urge this Court to reject the Bail Application in which he is appearing.

15. Mr. Haldankar and Mr. Kulkarni, learned APP for Respondent – State have vehemently opposed the Bail Applications

¹ 2024 SCC Online SC 3321

² Order dated 27.11.2024 in Special Leave Petition (Crl.) No.13378 of 2024

³ 2019 INSC 1325

and would submit that considering the serious nature of allegations and the vulnerability of the First Informant, there is possibility of tampering of evidence and influencing witnesses as Accused and First Informant reside in the same vicinity. Hence they would oppose grant of bail.

16. With the able assistance of the learned Advocates, I have perused the record of each case. *Prima facie* it is clear that only when the First Informant became pregnant from the 4th Accused namely Bhima Lakappa Dudhale she has unfolded the entire episode and lodged the 4 complaints which culminated into 4 FIRs only when a local politician addressed a letter and exerted pressure on the prosecution to register FIR. In so far as Applicant – Accused Dhammapal @ Dhamma Kailas More is concerned, it is *prima facie* evident that there is some enmity between the families which may be the reason for the FIR. He is an auto-rickshaw driver and earns his livelihood on the same. He is known to the First Informant and her family members. Association by First Informant of two years with him is accepted. Age of Informant may be such as she may not understand as argued, but keeping silence for such a long period is something which raises a doubt when multiple FIRs are filed at the same time. In so far as other two Applicants before me are concerned, it can be *prima facie* seen that the alleged acts were consensual in nature against which First Informant was accepting monetary consideration from

them according to her own statement as such she was conscious of her acts. Applicant – Mohd. Firoj Hasim Shaikh is a Tailor by profession and as submitted by Mr. Shaikh he is the sole breadwinner of his family. Similarly Applicant – Madhura Manruram Gupta is a vegetable vendor. From an overall consideration of the material placed before me it appears that First Informant though minor at the time of the incidents in question was capable of understanding the consequences of her actions. Furthermore there is also material contradiction in her police statement and 164 statement in respect of the third case which *prima facie* fails to inspire confidence in the prosecution case.

17. In the case of *Satender Kumar Antil Vs. Central Bureau of Investigation*⁴, the Supreme Court in paragraph No.12 has succinctly reiterated the well recognised principle that bail is the rule and jail is the exception in bail jurisprudence on the touchstone of Article 21 of the Constitution of India. Paragraph No.12 of the said judgement reads as under:-

“Bail is the rule

12. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India. This Court in Nikesh Tarachand Shah v. Union of India [Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1 : (2018) 2 SCC (Cri) 302] , held that : (SCC pp. 22-23 & 27, paras 19 & 24)

4 (2022) 10 SCC 51

“19. In Gurbaksh Singh Sibbia v. State of Punjab [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] , the purpose of granting bail is set out with great felicity as follows : (SCC pp. 586-88, paras 27-30)

‘27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra Nath Chakravarti, In re [Nagendra Nath Chakravarti, In re, 1923 SCC OnLine Cal 318 : AIR 1924 Cal 476] , AIR pp. 479-80 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the “Meerut Conspiracy cases” observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [K.N. Joglekar v. Emperor, 1931 SCC OnLine All 60 : AIR 1931 All 504] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard-and-fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson [Emperor v. H.L. Hutchinson, 1931 SCC OnLine All 14 : AIR 1931 All 356] , AIR p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much

better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. *Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. Public Prosecutor [Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240 : 1978 SCC (Cri) 115] that : (SCC p. 242, para 1)*

“1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law”. The last four words of Article 21 are the life of that human right.”

29. *In Gurcharan Singh v. State (Delhi Admn.) [Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the Court, that : (SCC p. 129, para 29)*

“29. ... There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.”

30. *In American Jurisprudence (2nd Edn., Vol. 8, p. 806, para 39), it is stated:*

“Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.”

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict.

Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.'

* * *

24. Article 21 is the Ark of the Covenant so far as the Fundamental Rights Chapter of the Constitution is concerned. It deals with nothing less sacrosanct than the rights of life and personal liberty of the citizens of India and other persons. It is the only article in the Fundamental Rights Chapter (along with Article 20) that cannot be suspended even in an emergency [see Article 359(1) of the Constitution]. At present, Article 21 is the repository of a vast number of substantive and procedural rights post Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248]."

18. Considering the above *prima facie* observations alongwith the fact that investigation has been completed and charge-sheet has been filed in all three matters, no likelihood of the trial concluding in the foreseeable future and long incarceration of Applicants of 1 year and 6 months, further incarceration of Applicants is unwarranted.

19. In view of the above, all three Bail Applications stand allowed on the following terms and conditions:-

- (i) Applicants i.e. (1) Dhammapal @ Dhamma Kailas More; (2) Mohd. Firoj Hasim Shaikh and (3) Madhuram Manruram Gupta are directed to be released on bail on furnishing P.R. Bond of Rs.20,000/- (Rs. Twenty Thousand only) each with one or two sureties in the like amount;
- (ii) Applicants shall report to the Investigating Officer at

Parksite Police Station, Vikhroli on the first Sunday of every month between 10:00 a.m. and 12:00 noon for the next 12 months and thereafter as and when called by the Investigating Officer;

- (iii) Applicants 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 they do so it will entitle the prosecution to apply for cancellation of this order;
- (iv) Applicants shall not influence any of the witnesses or tamper with the evidence in any manner;
- (v) Applicants shall keep the Investigating Officer informed of their current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable;
- (vi) Applicants shall not make any attempt to re-associate with the First Informant in any manner either through any device or in-person; and
- (vii) Any infraction of the conditions shall entail prosecution to apply for cancellation of bail granted to the Applicants.

20. Needless to say, violation of any of the aforesaid conditions would make the Applicants liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the Applicants in the present Application and that the Trial Court shall proceed further without being influenced by the observations made in this order.

21. Fees be paid by the High Court Legal Aid Services Authority of this Court to the learned appointed Advocates for Respondent No.2 in all the above 3 Bail Applications as per rules.

22. Bail Applications are allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay