

AGK

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

BAIL APPLICATION NO.1562 OF 2024

Smita Machhindra Satpute ... Applicant

V/s.

The State of Maharashtra & Anr. ... Respondents

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Mr. Nitin Satpute with Rachit Singh, Sofiya Ansari, Shobha Bhudhirat and Nandkumar Pal for the applicant.

Ms. Rajashree Newton, APP for respondent No.1-State.

Ms. Aruna Pai for respondent No.2.

Mr. J.B. Kadam, PSI, Nehru Nagar Police Station, Mumbai, is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 12, 2025

P.C.:

1. The present bail application filed under Section 439 of the Criminal Procedure Code, 1973 in relation to Crime Register No.146 of 2023 registered with Nehru Nagar Police Station in connection with offences punishable under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act" for short), Section 67 of the Information Technology Act, 2000 and under Section 80 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

2. The prosecution's case in short is that during New Year's Eve at a farm house on 31 December 2024, the accused was dancing and singing along a hindi song "Tune Mari Entry Aur Maine Bajayi Ghanti". According to prosecution, she deliberately touched private part of a minor male child aged 4 years despite his protest shouting "Bas Karo Na". According to prosecution, therefore, this clearly indicates his resistance and lack of consent. Despite his unequivocal objection, it is alleged that the applicant repeated the act. It is also alleged that there is existence of prior similar incident involving friend's son of the co-accused. The prosecution, therefore, apprehends that significant and immediate threat of committing similar offence against other minor child.

3. The applicant applied for bail before the Special Court, which came to be rejected. Hence, the applicant has filed present bail application.

4. Learned Advocate for the applicant submitted that maximum punishment as prescribed for the offence alleged against the applicant extends to maximum five years. The applicant was arrested on 12 May 2023. Charges were framed in December 2024. However, the trial has not yet commenced. He, therefore, placed reliance on the judgment in the case of *Satender Kumar Antil v. Central Bureau of Investigation* reported in (2022) 10 SCC 51 and *Union of India v. K.A. Najeer* reported in AIR 2021 SC 712 submits that by virtue of Article 21 of the Constitution of India, delay in trial violates constitution rights and on that ground considering the period of incarceration he is entitled to be released on bail.

5. Learned APP and learned Advocate representing the informant opposed the application contending that the allegations levelled against the applicant are exceptionally grave involving sexual assault on a four-year old male child. The material in the charge-sheet demonstrates not only lack of consent but also alleged persistence despite child's explicit protestation. The role attributed to the applicant points towards deliberate assault and, therefore, considering the gravity of the offence alleged against the applicant, the bail application deserves to be rejected.

6. Having considered the charge-sheet along with other material on record at this stage and considering the period of incarceration undergone by the applicant which is of more than two years, and the maximum punishment prescribed for the offence against the applicant is of five years, in my opinion, considering the stage of trial where charges are framed in the month of December 2023. However, the trial has not yet commenced. The list submitted by the prosecution before the Special Judge is of 13 witnesses. It is, therefore, unlikely that the trial may be complete in near future. Therefore, in my opinion, in view of judgment in the case of *Satendra Kumar Antil* and *K.A. Najeed*, the applicant deserves to be released on bail on the ground of violation of Article 21 of the Constitution of India. However, considering the gravity of offence alleged against the applicant, stringent conditions are required to be imposed.

7. The applicant is directed to be released on bail on furnishing cash surety in the amount of Rs.50,000/- and the applicant shall furnish P.R. Bond in the like amount within two weeks from the

date of her release on bail, subject to following conditions:

- a) The applicant shall not, in any manner, contact the victim or her family members, directly or indirectly;
- b) The applicant shall not enter the locality where the victim resides, and shall maintain a distance of at least 500 meters from the place of alleged incident;
- c) The applicant shall cooperate with the prosecution and attend all trial dates regularly;
- d) The applicant shall not tamper with evidence or influence any witness;
- e) The applicant shall provide his current residential address and inform the court in case of change of residence;
- f) The applicant shall not commit any offence during the pendency of trial, failing which his bail is liable to be cancelled.

8. The bail application stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)