

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1837 OF 2024

Prakash Ratanaram Patel

.. Applicant

Versus

State of Maharashtra and Anr.

.. Respondents

.....

- Ms. Shifa Khan a/w Mr. Avesh Qureshi i/by Mr. Wahab Khan, Advocates for Applicant.
- Ms. Shraddha S Pawar, appointed Advocate through Legal-aid for Respondent No.2.
- Ms. Megha S. Bajoria, APP for State.

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 16, 2025

P. C.:

1. Heard Ms. Khan, learned Advocate for Applicant; Ms. Pawar, learned appointed Advocate for Respondent No.2 and Ms. Bajoria, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail in connection with Crime No. 133 of 2022 registered with Ghatkopar Police Station for the offences punishable under Sections 354A, 376, 328, 506 of the Indian Penal Code, 1860 and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

3. At the time of incident prosecutrix was 17 years old and Applicant was 19 years old. Applicant is incarcerated for the past 2 years 11 months and 23 days in prison, pending trial.

4. Ms. Khan, learned Advocate for Applicant would draw my attention to the statement of prosecutrix appended at page No.35 of the Application and on reading it persuade me to read the statement of Applicant narrated to the doctor during her Medico Legal Examination which is placed on record pursuant to the previous order. She would submit that if the said statements are juxtaposed with the Section 164 statement of Applicant recorded before the magistrate on 08.04.2022 substantial infirmities can be seen therein. She would submit that supplementary statement of prosecutrix is recorded 1 and ½ months after date of recording of the above 3 statements and the incident on 27.04.2022. She would submit that prior to recording of supplementary statement, Applicant was arrested. She would submit that if the 3 statements; in the FIR, the Medico Legal statement and Section 164 statement are seen, *prima facie* no case for invocation of Section 376 can be made out and that is the precise reason as to why the supplementary statement was recorded on 27.04.2022 for the purpose of indicting the Applicant under Section of 376 of the IPC. I have perused the aforesaid statements and *prima facie* I find that what the learned Advocate for Applicant is stating appears to be true. This is because, alleged sexual assault is assented and alleged only in the supplementary statement and it is not alleged in the earlier 3 statements including the Section 164 Statement.

5. Ms. Bajoria, learned APP as also Ms. Pawar, learned appointed Advocate for Respondent No.2 would in tandem submit that case of the prosecutrix is consistent with her First Information Report as also the Medico Legal examination and Section 164 statement but insofar as the improvement made by her in unnumbered paragraph No.3 of her supplementary statement and the reason as to why she has come up with the case of sexual assault for the first time 1 and ½ months after filing of the First Information Report, remain unexplained. In view of the aforesaid *prima facie* infirmity observed in the statements of prosecutrix, and the *prima facie* fact that prosecutrix on her own volition went to meet the Applicant at the two hotel rooms due to her acquaintance, the Application deserves to be considered.

6. In that perspective decision of the Supreme Court in the case of ***Satpal Singh Vs. State of Haryana***¹ is referred to by the Court. Since prosecution has persuaded the Court to consider the presumption under Section 29 of the POCSO Act to contend that unless the contrary is proved, the said presumption will have to be accepted by the Court even at the bail stage.

7. This Court is not oblivious of the fact that there is a statutory presumption under Section 29 of the POCSO Act. However it does not mean that the prosecution version has to be accepted as

1 2010 AIR SCW 4951.

gospel truth in every case. Presumption does not mean that the Court cannot take into consideration *prima facie* facts of the particular case which are evident from the face of record.

8. Court is of the opinion that presumption would come into play only when prosecution is able to bring on record facts that would form the foundation for the presumption. Otherwise, all that the prosecution would be required to do is to raise some allegation against the accused and to claim that the case projected by it is true. The Court will have to be on guard to see that the application of presumption without advertent to the essential facts shall not lead to injustice. The presumption under Section 29 of the POCSO Act is not absolute. Attention in this regard is invited to the decision of High Court of Kerala in the case of ***Joy Vs. State of Kerela Represented through the Public Prosecutor***². The relevant paragraphs are reproduced thus:-

"9. Mere delay in reporting the matter to the authorities concerned, especially sexual assault on a minor girl, is immaterial and it would not be fatal to the prosecution case. However, in the instant case, it is not the delay alone that is significant. The significant fact is that the complaint was given to the authorities concerned only two weeks after the mother received the lawyer notice from the petitioner claiming a huge amount as professional fees. This raises suspicion on the prosecution case against the petitioner. When the victim had disclosed the matter to her mother in July, 2018, one would have expected the mother to report the matter to the authorities concerned much earlier than 22.09.2018. The fact that she reported the matter only after receiving a lawyer notice from the petitioner assumes significance.

2 2019 SCC OnLine 783.

10. *This court is not oblivious to Section 29 of the Act which contains a legislative mandate that the court shall presume commission of the offences by the accused unless the contrary is proved. Section 29 of the Act states that where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and 9 of the Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. The court shall take into consideration the presumption under Section 29 of the Act while dealing with an application for bail filed by a person who is accused of the aforesaid offences under the Act (See State of Bihar v. Rajballav Prasad, (2017) 2 SCC 178 : AIR 2017 SC 630).*

11. *However, the statutory presumption under Section 29 of the Act does not mean that the prosecution version has to be accepted as gospel truth in every case. The presumption does not mean that the court cannot take into consideration the special features of a particular case. Patent absurdities or inherent infirmities or improbabilities in the prosecution version may lead to an irresistible inference of falsehood in the prosecution case. The presumption would come into play only when the prosecution is able to bring on record facts that would form the foundation for the presumption. Otherwise, all that the prosecution would be required to do is to raise some allegations against the accused and to claim that the case projected by it is true. The courts must be on guard to see that the application of the presumption, without adverting to essential facts, shall not lead to any injustice. The presumption under Section 29 of the Act is not absolute. The statutory presumption would get activated or triggered only if the prosecution proves the essential basic facts. If the accused is able to create serious doubt on the veracity of the prosecution case or the accused brings on record materials which would render the prosecution version highly improbable, the presumption would get weakened. As held by the Apex Court in Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 : AIR 2011 SC 312, frivolity in prosecution should always be considered and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of anticipatory bail. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. It should necessarily depend on facts and circumstances of each case in consonance with the legislative intention."*

9. Attention is drawn to the decision of High Court of Kerala in the case of *XXXXXX Vs. State of Kerela Represented through the Public Prosecutor and Ors*³. The relevant paragraphs are reproduced thus:-

“19. Before parting with the judgment, we will also deal with the appellant's contention based on Section 29 of the POCSO Act. Section 29 is extracted herein below:

“29. Presumption as to certain offences.— Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.”

20. It is the submission of the learned counsel for the appellant based on Section 29 of the Act that reverse burden is cast on the accused to prove that they have not committed the offences under Sections 3, 5, 7 and 9 of the Act, the only precondition being that the accused is prosecuted for committing or abetting or attempting to commit any of the offences above referred. According to the learned counsel, the accused persons herein failed to discharge the reverse burden and therefore, they are liable to be convicted for the offences alleged. We cannot accept the above contention of the learned counsel. The argument, if accepted on its face value, is pregnant with the peril of accepting every prosecution charge, where offences under Sections 3, 5, 7 and 9 of the Act are canvassed, irrespective of its merits. Section 29 only creates an exception to the ordinary rule of innocence available to the accused in a criminal trial and puts the onus on the accused to rebut the presumption and establish his innocence. However, this presumption will operate only if the foundation to the prosecution case is laid by leading legally admissible evidence.

The statutory presumption under Section

3 CRA(V) No. 19 of 2020 decided on 24.02.2022.

29 cannot be understood to mean that in every case when a person is prosecuted for the specified offences, the prosecution version should be taken as gospel truth. The presumption will not mitigate the primary duty of the prosecution to establish the foundational facts constituting the offence, which duty is static on the shoulders of the prosecution. Once the same is done, the burden shifts to the accused by virtue of Section 29 of the Act to prove that he had not committed or abetted or attempted to commit the offence, as the case may be.

Our conclusions afore referred are in accord with the following judgments of the Hon'ble Supreme Court, where presumption under various statutes have been analysed and interpreted: (1) **K.Veerawami v. Union of India** [(1991) 3 SCC 655], (2) **State of Maharashtra v. Wasudeo Ramachandra Kaidalwar** [(1981) 3 SCC 199], (3) **Noor Aga v. State of Punjab** [(2008) 16 SCC 417], (4) **Kumar Exports v. Sharma Carpets** [(2009) 2 SCC 513], (5) **Abdul Rashid Ibrahim Mansuri v. State of Gujarat** [(2000) 2 SCC 513], (6) **Chandran & Others v. State of Kerala and Others** [AIR 2011 SC 1594], (7) **Naresh Kumar v. State of Himachal Pradesh** [AIR 2017 SC 3859] and (8) **Gangadhar @ Gangaram v. State of Madhya Pradesh** [AIR 2020 SC 3656]. These decisions were taken note of and discussed by a learned Single Judge of this Court in **Justin @ Renjith & Another v. Union of India** [ILR 2020 (4) Ker 679]. To the same effect is the judgment of another learned Single Judge of this Court in **David v. State of Kerala** [2020 (4) KHC 717 : 2020 CrLJ 3995]. We, therefore, reject the said contention of the appellant on the legal premise. On factual premise also, we find that the accused persons have rebutted the presumption under Section 29 by virtue of the evidence and circumstances already discussed, which were given due weightage in confirming the impugned judgment.

10. In the present case *prima facie* infirmities are noticeable in the prosecution case emanating from the FIR, the Section 164 statement and the supplementary statement recorded 1 and ½ months later making improvements which entitles the Applicant for bail.

11. In view of the above *prima facie* observations and citations referred to hereinabove, Bail Application is allowed subject to the following terms and conditions:-

(i) Applicant is directed to be released on bail on furnishing PR. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount;

(ii) 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;

(iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

(iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 01.00 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;

(v) 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;

(vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(viii) 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.

12. 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.

13. This Court appreciates the assistance rendered by Ms.Pawar, Advocate appointed through Legal Aid to espouse the cause of the Respondent No.2. Fees be paid by the High Court Legal Aid

Services Authority of this Court to the learned appointed Advocate for Respondent No.2 as per rules on production of a server copy of this order.

14. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]