

Ajay

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

CRIMINAL BAIL APPLICATION NO. 2049 OF 2024

Kuldip Hanuman Gautam

.. Applicant

Versus

The State of Maharashtra & Anr.

.. Respondents

-
- Mr. Prachish Shukla, Advocate for Applicant.
 - Ms. Megha S. Bajoria, APP for Respondent No.1 – State.
 - Ms. Priyanka B. Chavan, Appointed Advocate for Respondent No.2.
-

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 28, 2025.

P.C.:

1. Heard Mr. Shukla, learned Advocate for Applicant; Ms. Bajoria, learned APP for Respondent No.1 – State and Ms. Chavan, learned appointed Advocate for Respondent No.2.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R. No.840 of 2020 registered with Kandivali Police Station for offences under Sections 363, 376(n) of the Indian Penal Code, 1860 and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short “**POCSO Act**”). Applicant before me is incarcerated since 31.10.2020 i.e. 4 years, 5 months and 29 days.

3. Briefly stated prosecution case is that on 27.09.2020 first informant received a call from her younger daughter that her elder daughter i.e. prosecutrix packed her clothes and left the house informing her that she was going to office. However as she did not return on her regular time from work, first informant inquired in her office where she was told that prosecutrix was absent in office on that day and hence on 03.10.2020 first informant lodged the FIR against unknown person for having lured and kidnapped her daughter. During investigation CDR location of prosecutrix's mobile phone was located in Uttar Pradesh and thereafter the police apprehended prosecutrix alongwith Applicant who were staying in a rented premises in Uttar Pradesh. It is prosecution case that Applicant lured prosecutrix into accompanying him to Uttar Pradesh and forcefully established physical relations against her will.

4. Mr. Shukla, learned Advocate would submit that Applicant has been falsely implicated in the present crime due to some misunderstanding. He would submit that Applicant and prosecutrix were in a consensual love relationship which is evident from her statement recorded before the police appended at page No.26 of the Application where she has stated that she got acquainted to the Applicant through Facebook messenger and were in a love relationship and subsequently decided to get married. He has drawn my attention to the said statement and would submit that prosecutrix herself has

admitted that she was desirous of marrying Applicant about which she informed her family, however as her family refused to get her married, she decided to elope with him to Uttar Pradesh.

4.1. Next he has drawn my attention to page No.42 of the Application which is the statement of prosecutrix i.e. history narrated during her Medico Legal Examination wherein she has categorically stated that she insisted on running away from home and getting married but Applicant initially refused and that later on he gave into her demands and they both eloped to Uttar Pradesh got married with blessings of Applicant's family and were staying there and established physical relations.

4.2. He would submit that considering the consensual nature of relationship between Applicant and prosecutrix which is evident from her statements, false indictment of Applicant is clearly made out. He would submit that owing to the false indictment Applicant has suffered long – incarceration of 4 years, 5 months and 29 days and his further incarceration is unwarranted in such glaring facts. He would submit that Applicant has no criminal antecedents to his discredit. In view of his above submissions, he would urge the Court to enlarge Applicant on bail.

5. Ms. Bajoria, learned APP and Ms. Chavan, learned Advocate for Respondent No.2 have opposed the Bail Application. They would

submit that consent of prosecutrix is immaterial in such cases, however considering the long incarceration of the Applicant in the facts of the present case, they would fairly submit that the Court may pass appropriate orders.

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

7. *Prima facie* perusal of the statements given by the prosecutrix reveal that in furtherance of her constant insistence she voluntarily eloped with Applicant to Uttar Pradesh and got married and thereafter stayed with him. That apart, Applicant's long incarceration of 4 years, 5 months and 29 days is also another facet which impels me to consider his case for grant of bail. There is no possibility of the trial completing in the near foreseeable future. Applicant also does not have any criminal antecedents to his discredit.

8. 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 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.

9. 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 Kerala Represented through the Public Prosecutor***¹. The relevant paragraph Nos.10 and 11 are reproduced thus:-

“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 advertent to essential facts, shall not

¹ 2019 SCC OnLine 783.

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.”

10. *Prima facie* considering the consensual nature of relationship of prosecutrix and Applicant and she admitting to having eloped with him on her own volition *prima facie* makes it clear that she had complete understanding of consequences of her action. Furthermore the long incarceration of Applicant of 4 years, 5 months and 29 days is also another facet which is considered by the Court.

11. In so far as offences punishable under Sections 4, 8 and 12 of POCSO Act (special law) are 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 more than 4 years without trial reaching its logical end.

12. The principle that bail is the rule and jail is the exception has been well recognised in numerous pronouncements by the Supreme

Court. As long back as in 1924 it was held by the High Court of Calcutta in the case of *Nagendra Nath Chakravarti, In re [Nagendra Nath Chakravarti]*², 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.

13. In view of my above *prima facie* observations and the judicial pronouncements, in my opinion Applicant before me is entitled for grant of bail.

14. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- 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;

² 1923 SCC OnLine Cal 318

- (iv) 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;
- (v) 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;
- (vi) 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;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(ix) 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.

15. 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.

16. Fees of Ms. Chavan, learned Advocate appointed through Legal Aid 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.

17. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

Digitally signed
by: AJAY
TRAMBAK
UGALMUGALE
Date: 2025.04.30
14:47:33 +0530