

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2188 OF 2024

Rajendra Narayan Choudhary

.. Applicant

Versus

The State of Maharashtra & Anr.

.. Respondents

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- Mr. Satyam Harshad Nimbalkar i./by Mr. Abhishek Ulhas Arote Advocates for Applicant.
- Ms. Mahalaksmi Ganapathy, APP for Respondent No.1 – State.
- Ms. Kalyani Mangave, Appointed Advocate for Respondent No.2.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 07, 2025

P.C.:

1. Heard Mr. Nimbalkar, learned Advocate for Applicant; Ms. Ganapathy, learned APP for Respondent No.1 – State and Ms. Mangave, learned Advocate for Respondent No.2.

2. This is the second Bail Application filed by Applicant in connection with C.R. No. 47 of 2021 registered with Rabale Police Station for offences under Sections 376(2)(f), 376(2)(n), 376-AB, 376(3), 354, 342, 324 and 506(2) of the Indian Penal Code, 1860 and Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short “**POCSO Act**”).

3. Mr. Nimbalkar, learned Advocate for Applicant has at the outset drawn my attention to order dated 25.10.2023 passed by this Court (Coram: M.S. Karnik, J.) in the previous Bail Application of the

Applicant whereby the said Bail Application was allowed to be withdrawn with liberty to apply for bail after six months or after recording of evidence of the child witness, whichever is earlier.

4. Briefly stated allegations against the Applicant are that he being an alcoholic sexually abused his own biological daughter. First informant is the mother of prosecutrix i.e. wife of Applicant. FIR is lodged on 07.02.2021 for alleged incidents which have occurred between 03.11.2020 to 12.11.2020. Applicant is arrested in the present crime on 08.02.2021 and is in incarceration since 4 years and 2 months.

5. Mr. Nimbalkar, learned Advocate for Applicant would submit that apart from the merits of the matter, this Court may consider the facet of long pre-trial incarceration of Applicant. He would submit that the evidence of the first informant as well as the two daughters including the prosecutrix is completed. He would hence submit that as the evidence of the principal witnesses of prosecution is completed, no prejudice would be caused to trial if Applicant is released on bail. He would argue that the Applicant's right to speedy trial and justice emanating from Article 21 of the Constitution of India stands violated in such glaring circumstances. He would submit that considering that the trial is unlikely to be completed in the near foreseeable future, Applicant may be released on bail on conditions deemed fit by the

Court.

6. Ms. Ganapathy, learned APP has vehemently opposed the Bail Application. She would submit that this Court may consider the gravity of the offence and there is sufficient material on record to *prima facie* which corroborates the prosecution case as also establishes the complicity of the Applicant in the crime. 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 & Anr.***² and would contend that in cases where Court is considering grant of bail in severe offences like murder, rape and dacoity, once trial commences and prosecution starts examining the witnesses, Court should be loathe in entertaining the Bail Application. She would submit that Supreme Court has referred to certain guidelines enumerated in paragraph No. 13 of the decision in the case of ***State of Jharkhand (first supra)*** while referring to a previous decision of the Supreme Court in the case of ***Mahipal Vs. Rajesh Kumar @ Polia***³ and those guidelines are required to be adhered to by the Court. She would submit that discretion of the Court while granting bail in serious and heinous offences should be curtailed especially when the trial has commenced as is in the present case before me as there is every likelihood that Applicant may influence and/or tamper with the evidence and/or witnesses. She

1 2024 SCC OnLine SC 3321

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

3 2019 INSC 1325

would submit that prosecution is yet to examine 6 more witnesses. Hence she would urge for rejection of the Bail Application.

7. Ms. Mangave, learned Advocate appointed to represent and espouse the cause of Respondent No.2 has adopted the submissions advanced by learned APP and in addition to the aforesaid would submit that Applicant being the biological father of prosecutrix, there is threat to prosecutrix as well as first informant, if he is enlarged on bail. She would submit that this Court may consider the aforesaid fact while deciding the present Application and would urge the Court to reject the bail Application.

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

9. The only two reasons which impel me to consider the present Application is the facet of long incarceration of Applicant pending trial and the directions contained in the previous bail rejection order dated 23.10.2023. Long incarceration is an admitted position on the face of record. Conditions prescribed in the previous order have been adhered to and evidence of the principal 3 witnesses is over. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the Court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence

while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents are required to be considered in such cases.

10. I have perused and examined both the decisions relied upon by the learned APP. Factors required for consideration are enumerated by the Supreme Court in the case of *State of Jharkhand (supra)* have been considered by the Court in the present case. The discretion of the Court vests completely in favour of the Applicant considering his long incarceration of the Applicant as noted *vis-a-vis* submissions made by the learned APP. If Court has to adhere to the submission advanced by the learned Prosecutor, then the right to seek bail will be curtailed at the outset. This Court while rejecting the bail application previously applied its mind and gave directions. Those directions are complied with. Hence Bail Application deserves consideration. Arguments advanced by the learned APP are rejected. Appropriate conditions can be imposed.

11. 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?”***

12. Argued before me is a case concerning liberty of an under-trial who has been incarcerated for 4 years and 2 months, 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.

13. In so far as offences punishable under Sections 4, 6 and 8 of POCSO Act (special law) are concerned, it may be stated that the

provisions of this law are, though, stringent in nature, however 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.

14. 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:-

14.1. In the landmark judgement of *Maneka Gandhi Vs. Union of India*⁴, 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 cannot be arbitrary, oppressive, or unreasonable.

14.2. In the case of *Hussainara Khatoon Vs. Home Secy., State of Bihar*⁵ 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

4 1978 (1) SCC 248

5 (1980) 1 SCC 81

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.”

14.3. The Supreme Court in the case of ***Shaheen Welfare Association Vs. Union Of India***⁶ 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.”

14.4. The Supreme Court in the case of ***Union of India v. K. A. Najeer***⁷ 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

⁶ 1996 SCC (2) 616

⁷ Criminal Appeal No. 98 of 2021

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.”

15. Applicant in present case has been in custody for 4 years and 10 months. There is no possibility of the trial concluding in the near 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.***⁸ the Supreme Court held as under:-

“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

8 1992 (1) SCC 225

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)

16. 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.

17. In the case of *Supreme Court Legal Aid Committee (Representing undertrial prisoners) Vs. Union of India*⁹, 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

9 (1995) 4 SCC 695

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.”

18. Considering the above judicial pronouncements *vis-a-vis* his long incarceration facet pending trial, the fact that trial shall not be completed in the near foreseeable future and the previous bail rejection order dated 25.10.2023 laying down conditions having been complied with by the Trial Court, in my *prima facie* opinion Applicant before me can be released on 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.

19. 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.25,000/- with one or two sureties in the like amount;

- (ii) Before his actual release from jail, Applicant shall furnish an undertaking stating his address and all other details where he proposes to reside and with whom 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 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.

20. 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.

21. Fees of the learned Advocate Ms. Mangave, 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.

22. Bail Application is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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