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

BAIL APPLICATION NO. 2530 OF 2024

Nadim Jakir Aalam

Applicant /
.. Accused

Versus

The State of Maharashtra and Anr.

.. Respondents

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- Ms. Anima Mishra a/w. Mr. Anuj Singh, Advocates for Applicant.
- Ms. Mahalakshmi Ganapathy, APP for Respondent No.1 – State of Maharashtra.
- Mr. Yashodeep P. Deshmukh a/w. Ms. Vaidehi Pradeep and Mr. Aniket Jadhav, Advocate for Respondent No.2.
- API – S. D. Gore, Manpada Police Station present.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 17, 2025.

P.C.:

1. Heard Ms. Mishra, learned Advocate for Applicant; Ms. Ganapathy, learned APP for Respondent No.1 – State and Mr. Deshmukh, learned 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.279 of 2018 registered with Manpada Police for the offences punishable under Sections 363, 377, 302, 201 and 328 read with Section 34 of the Indian Penal Code, 1860 (for short “**IPC**”) and Section 4, 7 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short “**POCSO**”). In the present case, there are 2

Accused. Applicant before me is Accused No.2. Accused No.1 is Aehsan Sabir Alam. Applicant is incarceration since 10.07.2018.

3. Mr. Mishra, learned Advocate for Applicant would submit that Applicant has been in incarceration since long. The progress of the trial is abysmal as submitted and most importantly on merits of the case, role of the Applicant if seen would persuade the Court to grant him bail.

4. Briefly stated, according to prosecution Accused No.1 – Aehsan Sabir Alam kidnapped one minor child and compelled him to drink alcohol and gave him sleeping pills and thereafter committed unnatural intercourse with him and committed his murder. According to prosecution, in so far as the role of Accused No.2 – Applicant is concerned, he is alleged to have assisted Accused No.1 in disposing of the body of minor child in a drainage.

5. The date of incident is 24.05.2018. Investigation has been completed and charge-sheet has been filed long back. Trial has also commenced. Prosecution through Ms. Ganapathy has informed that it desires to examine 40 witnesses out of which witness action of 4 witnesses is completed as on date. Record shows that Applicant was arrested on 10.07.2028. Pursuant to arrest present Applicant was severely assaulted and tortured in custody leading to he being admitted in Siddhivinayak Hospital and Neptune Hospital by the

police. Applicant admittedly does not have any criminal antecedents. According to prosecution, present Applicant has admitted to the crime in question in his confessional statement.

6. The entire case of the prosecution is based upon the statement of one witness called Ananda Subhash Desai who is the owner of Medical Store from where it is alleged that Applicant i.e. Accused No.1 purchased 'Trika 0.25' tablets on 23.05.2018. Next the case of the prosecution is based upon the statement recorded by another witness called Arman Samjan Aalam who was working alongwith the present Applicant. While doing so, he overheard conversation between Accused No.1 and present Applicant in which the present Applicant was overheard talking to Accused No.1 by stating that the news of boy with whom he committed the wrong and had disposed of his body in the drainage is now investigated by the Police. When the Applicant informed this to Accused No.1, he told him not to tell anybody, if he had heard anything.

7. In so far as disclosure panchnama is concerned, it is at behest of Accused No.1 – Aehsan Sabir Alam. He has produced the gunny bag in which he had put the dead body of the minor child and his clothes which were worn by the victim at the time of crime. Record shows that Accused No.1 has also shown the shop / bar called 'Ruchira Deshi Bar' from where he had purchased the liquor. Statement of bar

owner has been recorded by the prosecution and in the test identification parade he has identified Accused No.1. Thereafter prosecution has recorded statements of two other witnesses called Azaruddin Razzak Shaikh and Mohit Gautam Prasad Tiwari who have seen Accused No.1 having taken the victim alongwith him to the incident spot and identified him during the test identification parade. Undoubtedly offence is serious and heinous. In so far as the role of Applicant i.e. Accused No.2 is concerned, he is Accused of having helped Accused No.1 to destroy the evidence of the crime thereafter.

8. At this stage, when the case of Accused No.2 is before me it needs to be delineated that from the record it is seen that it was Accused No.1 who took disadvantage of the aloneness of the victim – minor child and offered him a chocolate and lured him to Room No.104, a newly constructed building called ‘Orchid’ and took him in its A-Wing. Prosecution record further highlights the fact that Accused No.1 showed him certain videos from his mobile phone and gave him sleeping pills and also forced him to consume liquor by mixing it with water and caused him to become unconscious and thereafter committed unnatural act with him.

9. Prosecution thereafter highlights that body of victim was kept hidden by him under cardboard and dried grass and only in the night time the body of the minor victim was put in the gunny bag and

thrown in the drainage tank.

10. The statement of witness called Arman Alam which has been heavily relied upon by the prosecution for indictment of the Applicant for having abetted in the crime in disposing of the body of the minor child is clouded with suspicion. For the reason that the said witness filed an Application before the Maharashtra State Human Rights Commission on 10.07.2018 and stated that the concerned API on behalf of the prosecution had called him and the Accused in the Police Station and locked them up and on the following day they all were beaten with belt, stick, fist and blows and threatened to record their confession. The said witness is the key witness whose statement is relied upon by the prosecution for indicting the role of Accused No.2 – Applicant before me. That statement has already been delineated hereinabove.

11. The other two incriminating statements which have been heavily relied upon by the prosecution are the statements of the owner of liquor shop and medical store who have both identified Accused No.1 – Aehsan Sabir Alam as the person who had purchased the goods from their shop and further statements of the two witnesses who had seen the minor victim with Accused No.1 going towards the said building.

12. The other incriminating evidence according to prosecution as per the CA Report are pornographic video and images and other obscene videos found in mobile phone of Accused No.1 - Aehsan Sabir Alam which was seized from his possession.

13. In the above backdrop, after hearing Mr. Mishra, learned Advocate for Applicant and on the request made by the Intervenor i.e. Mr. Deshmukh, learned Advocate for the Complainant, I have heard him at length also.

14. At the outset, Mr. Deshmukh has drawn my attention to page No.105 of the Bail Application wherein spot panchnama dated 19.07.2018 is appended. He would submit that this is the statement recorded by the police of the main Accused No.1 – Aehsan Sabir Alam given to the police panchas in Hindi. In that statement at page No.106 of the Bail Application, Accused No.1 – Aehsan Sabir Alam has admitted that he has committed crime. He would submit that after the crime was committed the body of the minor victim was attempted to be disposed of by Accused No.1 – Aehsan Sabir Alam by putting it in a gunny bag and it was camouflaged with cardboard and dried grass and at that time, present Applicant i.e. Accused No.2 came to the said Room/Flat after the incident had taken place and went to the bathroom for doing toilet and at that time Accused No.2 – Applicant saw the exposed legs of the minor victim and when he confronted the

Applicant immediately. Accused No.1 – Aehsan Sabir Alam told Accused No.2 that he committed a serious breach with the minor victim and told him not to inform anybody and thereafter they came down after the body having been remained hidden over there.

15. Mr. Deshmukh would vehemently submit that pursuant thereto when the body of the minor victim was thrown into the drainage, Accused No.2 – Applicant assisted the Accused No.1 in destroying the evidence and thereafter his such act cannot be pardoned since his role is very clear of having abetted and assisted in the crime. He would vehemently submit that considering the nature of the crime, the manner in which the crime took place and the material available on record including the medical evidence and the role of the Applicant, this Court should not allow the present Bail Application of Accused No.1 – Applicant and reject the same.

16. Ms. Ganapathy, learned APP has also vehemently submitted that the trial in the present case is already commenced. Four witnesses have already been examined. She in her usual fairness after taking appropriate instructions from the Investigating Officer would inform the Court that prosecution desires to examine 40 witnesses in the present case.

17. I have heard the submissions made by Mr. Mishra, learned Advocate for Applicant; Mr. Deshmukh, learned Advocate for

Intervenor and Ms. Ganapathy, learned APP for the State in the present case and with their able assistance perused the entire record placed before me.

18. It is seen that role of Accused No.2 – Applicant before me has been clearly identified to the extent of he having abetted and assisted according to the witness statement. However, the very same witness who has overheard the conversation between Accused No.1 and Accused No.2 – Applicant before me has also filed a complaint with the Maharashtra State Human Rights Commission which has been delineated hereinabove. Though Ms. Ganapathy and Mr. Deshmukh have vehemently relied upon the medical evidence, it is *prima facie* observed that in so far as the commission of the incident and act in question is concerned it is clearly pointed out qua the Accused No.1 who is the main Accused. In the present case, Accused No.2 – Applicant before me has been incarcerated for 6 years, 6 months and 8 days.

19. In the case of *Emperor vs H.L. Hutchinson*¹ the Allahabad High Court as far back as in the year 1931 held that power of granting bail conferred on High Court is entirely unfettered by any conditions. It has held that legislature has given the High Court and the Court of Session discretion unfettered by any limitation other than that which controls all discretionary powers vested in a Judge, viz. that the

¹ AIR 1931 ALL 356

discretion must be exercised judiciously. The Court has given primacy to the fact that Accused person if granted bail will be in a much better position to defend himself. In this very case, it was delineated that grant of Bail is the Rule and refusal is an exception.

20. The Hon'ble Supreme Court in the case of ***Hussainara Khatoon vs. Home Secy, State of Bihar***² held as under:-

“Now obviously procedure prescribed by law for depriving a person of liberty cannot “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 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.”

21. The Hon'ble Supreme Court in ***Shaheen Welfare Association Vs. Union Of India***³ dealing with a PIL seeking reliefs for under-trial prisons charged under the Terrorist and Disruptive Activities (Prevention) Act, 1987 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.”

2 (1980) 1 SCC 81

3 1996 SCC (2) 616

22. The Hon'ble Supreme Court in case of ***Union of India Vs. K.***

A. Najeeb⁴ held as under:-

“12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), Babba v. State of Maharashtra and Umarmia v. State of Gujarat enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.”

23. Applicant has been in custody for almost 6 years, 6 months and 8 days. Detaining an under-trial individual for such an extended period violates his fundamental right to speedy trial flowing from Article 21 of the Constitution of India. At this juncture, I deem it appropriate to list out the observations of the Supreme Court shedding light on concerns underlying the Right to speedy trial from the point of view of the accused in custody whose liberty is affected in the case of ***Abdul Rehman Antulay & Ors. Vs. R.S. Nayak & Anr⁵***.

“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.

⁴ Criminal Appeal No.98 of 2021 decided on 01.02.2021

⁵ 1992 (1) SCC 225

(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 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)

24. The Supreme Court has also simultaneously laid down in a series of judgments and orders that in situations where the under-trial / accused persons have suffered incarceration rather long incarceration for 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-trials on bail, as bail is the rule and jail is an exception.

25. Furthermore, the Supreme Court in the case of *Javed Gulam Nabi Shaikh Vs. State of Maharashtra*,⁶ observed as follows:

“18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and

⁶ 2024 SCC OnLine SC 1693

economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”
(emphasis added)

26. In *Satender Kumar Antil Vs. CBI*⁷, Supreme Court reiterated the following stand regarding jurisprudence of bail:

“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...”
(emphasis added)

27. Considering the long incarceration of the Applicant and slow progress of the trial and in view of the specific role of Accused No.2 – Applicant before me as delineated herein above, I am of the opinion that Applicant deserves to be enlarged on bail.

28. In view of the above, Accused No.2 – Applicant before me is allowed in terms of prayer clause (a) subject to the following terms and conditions:-

ORDER

- (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;

⁷ (2022) 10 SCC 51

- (ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 p.m. or if as and when called for;
- (iii) 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 revocation of this order;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time; and
- (vii) Any infraction of the above conditions shall entail revocation of this order.

29. It is clarified that the observations in this order are limited for the purpose of granting bail only and I have not made any observations on merits of the case.

30. All concerned shall act on production of a server copy of this order and no authority shall insist on a certified copy of this order.

31. In view of the above directions, Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

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