

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2590 OF 2024

Sanjay Ramchandra Behera

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondents

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- Mr. Arvind Tiwari a/w. Mr. S.J. Pandey and Mr. Manish Shukla, Advocates for Applicant.
- Mr. Hitendra J. Dedhia, APP for Respondent No.1- State
- Ms. Payal Vardhan, appointed Advocate for Respondent No.2- Complainant

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 20, 2025

P.C.:

1. Heard Mr. Tiwari, learned Advocate for Applicant, Mr. Dedhia learned APP for Respondent No.1- State and Ms. Vardhan learned appointed Advocate for Respondent No.2- Complainant.

2. This is the second Bail Application of the Applicant under Section 439 of Code of Criminal Procedure, 1973 (for short '**CrPC**') seeking Bail in connection with C.R. No.344 of 2017 registered with Narpoli Police Station for offences punishable under Section 376 of the Indian Penal Code, 1860 (for short '**IPC**') and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO**'). The Applicant is in custody since 11.08.2017 i.e. 7 years 6 months and 10 days.

3. This Application has been filed by the Applicant through Jail and on 22.01.2025 Mr. Arvind Tiwari, learned Advocate filed vakalatnama to represent the Applicant. By order dated 05.02.2025 this Court appointed Ms. Payal Vardhan, learned Advocate practising at the bar to represent and espouse the cause of Respondent No.2.

4. Briefly stated the prosecution case is that the prosecutrix aged 10 years old was sexually assaulted on three specific occasions by Applicant who is the husband of her tuition teacher. Dates of the first two incidents cannot be recalled by the prosecutrix in her statement. The last incident occurred on 04.08.2017. However prosecutrix has narrated three specific incidents in her statement at different locations. First incident is alleged to have taken place at the godown of Applicant where she accompanied him in his car, second incident is alleged to have taken place at his house where she accompanied him in his car and the third incident is alleged to have taken place inside the car on 04.08.2017. Dates of first two incidents are not stated / recalled by prosecutrix. It is prosecution case that on 05.08.2017 prosecutrix unfolded the three incidents to her neighbour namely Aishwarya Patil and asked her not to inform her mother as she was under threat of Applicant. On 08.08.2017 the neighbour disclosed the said information to the First Informant mother of prosecutrix. On 11.08.2017 FIR was registered by First Informant against Applicant.

5. Mr. Tiwari, learned Advocate for Applicant at the outset would submit that there is material discrepancy in the statement of prosecutrix recorded before the Investigating Officer and the Magistrate under Section 164 CrPC. He would submit that in the 164 statement prosecutrix has stated that she was molested by Applicant every two days whereas in the FIR statement she has not stated anything more than the three specific incidents narrated by her. He would submit that there is a delay of 3 days in lodging of FIR by First Informant after getting knowledge about the alleged incidents from her neighbour Aishwarya Patil on 08.08.2017 and there is delay of 3 days on part of Aishwarya Patil in informing about the same to First Informant after the prosecutrix confided in her. On this point he has referred to and relied upon the decision of this Court in the case of *Jagannath Narayan Nikam & Ors Vs. State of Maharashtra*¹ wherein this Court has iterated the importance of prompt lodging of FIR in such situations. He would submit that there is no statement of any independent witness recorded by prosecution to even *prima facie* establish Applicant's role.

6. He would submit that investigation is completed and charge-sheet is filed before the Trial Court in 2017 itself, however trial is progressing at a very slow pace for no fault or delay on part of Applicant. He would submit that prolonged incarceration of Applicant

¹ 1994 SCC OnLine Bom 306

of 7 years 6 months and 10 days needs to be taken into consideration by this Court *vis-a-vis* Applicant's fundamental right to speedy trial and justice emanating from Article 21 of the Constitution of India. He would submit that there is no recovery or discovery pending at instance of Applicant and there is no likelihood of the trial being completed in the foreseeable future. He would hence pray for enlargement of Applicant on bail.

7. He has referred to and relied on the following judgments in support of his submissions for enlarging Applicant on bail on the ground of his long incarceration:-

- (i) *Union of India Vs. K. A. Najeeb*²;
- (ii) *Chintan Vidyasagar Upadhyay Vs. State Of Maharashtra*³;
- (iii) *Indrani Pratim Mukherjea Vs. CBI & Anr*⁴;
- (iv) *Anil Shankar Patil Vs. State of Maharashtra*⁵;
- (v) *Babba Vs. State of Maharashtra*⁶;
- (vi) *Jagdish Kumar Vs. State (Delhi Admin)*⁷ and
- (vii) *Pravin Dilip Waghela Vs. State of Maharashtra*⁸

8. Mr. Dedhia, learned APP appearing for the prosecution would submit that there is no change in circumstance stated by the

2 2021 SCC OnLine SC 50
 3 2022 All MR (Cri) 1587 SC
 4 2022 All MR (Cri) 2282 SC
 5 BA (St.) No.33 of 2022 decided on 29.07.2022
 6 2005 All MR 569 SC
 7 1990 CrIj 730 Del
 8 CrI BA. 523 of 2022

Applicant for filing the second bail application and a strong *prima facie* case is made out against him and there are serious allegations against him. He would submit that medical reports of the prosecutrix are positive and a corroborative piece of evidence. On the issue of delay in filing FIR he would submit that the same is satisfactorily explained and that it is well settled law that in matters arising out of POCSO Act delay cannot be held against the victim. He would submit that there are multiple incidents narrated in detail by the prosecutrix and Applicant resides in the same vicinity where the prosecutrix resides and hence there is every possibility of him threatening the prosecutrix, First Informant and witnesses in the matter and since witness action is in progress before Trial Court, he would request that the Application be rejected.

9. Ms. Vardhan, learned appointed Advocate for Respondent No.2 has supported and adopted the submissions of Mr. Dedhia. She would submit that the prosecutrix has precisely narrated the incidents in detail and also stated that Applicant threatened her on various instances and owing to his fear and threats, she did not disclose the incidents to anyone and remained silent. She would submit that there is every possibility that upon release on bail Applicant may intimidate the prosecutrix and First Informant as they both reside in the same vicinity. She would thus urge the Court to reject the Bail Application as the crime in question qualifies to be a heinous crime.

10. I have heard learned Advocates at the bar and with their able assistance perused the record of the case.

11. It is ironical and intriguing that dates of first two incidents are not remembered by the prosecutrix when all other precise details are narrated by her. These are very serious charges. The mother of prosecutrix who is a home-maker has also not noticed any indifferent signs in her daughter aged 10 years only after the first two incidents and even after the third incident. Most importantly the prosecutrix continued to go to tuition at the same place. The trial will undoubtedly determine the guilt of Applicant.

12. 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.

13. 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 proposition: ***“How can Courts find a balance between the two polarities?”***

14. Argued before me is a case concerning liberty of an under-trial who has been incarcerated for 7 years 6 months and 10 days a situation impacting the rights of under-trials 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.

15. The ethos and essence of bail has been laid down as far back as in the year 1923 in the case of *In Re: Nagendra Nath Chakravarthi*⁹ by the Calcutta High Court wherein it has been stated that the final purpose of granting bail is to ensure and secure presence of accused for conduct of trial before Trial Court and if that purpose is seen to be served then in that case bail should be granted.

16. In the case of *Emperor Vs. H.L. Hutchinson*¹⁰, 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 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 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. This was in the famous Meerut Conspiracy case. Justice Mukerji writing for the Bench in paragraph No.9 held as under:-

“9. Speaking for myself, I think it very unwise to make an attempt to lay down any particular rules for the guidance of the High Court, having regard to the fact that the legislature itself left the discretion of the Court entirely unfettered. The reason for this action on the part of the legislature is not far to seek. The High Court might be safely trusted in this matter and it goes without saying that it would act in the best interests of

⁹ 1923 SCC OnLine CAL 318

¹⁰ AIR 1931 ALL 356

justice whether it decides in favour of the prosecution or the defence. The variety of cases that may arise from time to time cannot be safely classified and it will be dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes.”

17. In the case of *Satender Kumar Antil Vs. Central Bureau of Investigation*¹¹, in paragraph Nos.6 to 15 the Supreme Court considered the prevailing situation of prisons in India, definition of trial and bail, principle of presumption of innocence and reiterated the well recognised principle that bail is the rule and jail is the exception in bail jurisprudence on the touchstone of Article 21 of the Constitution of India. Paragraph Nos.6 to 15 of the said judgement read as under:-

“Prevailing situation

6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.

Definition of trial

7. The word “trial” is not explained and defined under the Code. An extended meaning has to be given to this word for the purpose of enlargement on bail to include, the stage of investigation and thereafter. Primary considerations would obviously be different between these two stages. In the former stage, an arrest followed by a police custody may be warranted for a thorough investigation, while in the latter what matters substantially is the proceedings before the court in the form of a

11 (2022) 10 SCC 51

trial. If we keep the above distinction in mind, the consequence to be drawn is for a more favourable consideration towards enlargement when investigation is completed, of course, among other factors.

8. Similarly, an appeal or revision shall also be construed as a facet of trial when it comes to the consideration of bail on suspension of sentence.

Definition of bail

9. The term “bail” has not been defined in the Code, though is used very often. A bail is nothing but a surety inclusive of a personal bond from the accused. It means the release of an accused person either by the orders of the court or by the police or by the investigating agency.

10. It is a set of pre-trial restrictions imposed on a suspect while enabling any interference in the judicial process. Thus, it is a conditional release on the solemn undertaking by the suspect that he would cooperate both with the investigation and the trial. The word “bail” has been defined in Black's Law Dictionary, 9th Edn., p. 160 as:

“A security such as cash or a bond; esp., security required by a court for the release of a prisoner who must appear in court at a future time.”

11. Wharton's Law Lexicon, 14th Edn., p. 105 defines “bail” as:

“to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance when required, in order that he may be safely protected from prison, to which they have, if they fear his escape, etc. the legal power to deliver him.”

Bail is the rule

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. This Court in *Nikesh Tarachand Shah v. Union of India* [*Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1 : (2018) 2 SCC (Cri) 302] , held that : (SCC pp. 22-23 & 27, paras 19 & 24)

“19. In *Gurbaksh Singh Sibbia v. State of Punjab* [*Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] , the purpose of granting bail is set out with great felicity as follows : (SCC pp. 586-88, paras 27-30)

‘27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that

right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in *Nagendra Nath Chakravarti, In re* [Nagendra Nath Chakravarti, In re, 1923 SCC OnLine Cal 318 : AIR 1924 Cal 476] , AIR pp. 479-80 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. In two other cases which, significantly, are the “Meerut Conspiracy cases” observations are to be found regarding the right to bail which deserve a special mention. In *K.N. Joglekar v. Emperor* [K.N. Joglekar v. Emperor, 1931 SCC OnLine All 60 : AIR 1931 All 504] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard-and-fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In *Emperor v. H.L. Hutchinson* [Emperor v. H.L. Hutchinson, 1931 SCC OnLine All 14 : AIR 1931 All 356] , AIR p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. *Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. Public Prosecutor [Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240 : 1978 SCC (Cri) 115] that : (SCC p. 242, para 1)*

“1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law”. The last four words of Article 21 are the life of that human right.”

29. *In Gurcharan Singh v. State (Delhi Admn.) [Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the Court, that : (SCC p. 129, para 29)*

“29. ... There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.”

30. *In American Jurisprudence (2nd Edn., Vol. 8, p. 806, para 39), it is stated:*

“Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.”

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.’

* * *

24. *Article 21 is the Ark of the Covenant so far as the Fundamental Rights Chapter of the Constitution is concerned. It deals with nothing less sacrosanct than the*

rights of life and personal liberty of the citizens of India and other persons. It is the only article in the Fundamental Rights Chapter (along with Article 20) that cannot be suspended even in an emergency [see Article 359(1) of the Constitution]. At present, Article 21 is the repository of a vast number of substantive and procedural rights post Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248].”

13. *Further this Court in Sanjay Chandra v. CBI [Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] , has observed that : (SCC p. 52, paras 21-23)*

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.”

Presumption of innocence

14. *Innocence of a person accused of an offence is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the court. Thus, it is for that agency to*

satisfy the court that the arrest made was warranted and enlargement on bail is to be denied.

15. Presumption of innocence has been acknowledged throughout the world. Article 14(2) of the International Covenant on Civil and Political Rights, 1966 and Article 11 of the Universal Declaration of Human Rights, 1948 acknowledge the presumption of innocence, as a cardinal principle of law, until the individual is proven guilty.”

18. The Supreme Court in a landmark decision of 1978 in the case of *Gudikanti Narasimhulu & Ors. Vs. Public Prosecutor, High Court of Andhra Pradesh*¹² observed as under:-

“6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the court punishing him with imprisonment. In this perspective...” (emphasis supplied)

19. Thereafter the Supreme Court in a plethora of judgements have 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 undertrial. Some of the important decisions of the Supreme Court and some of the High Courts are discussed herein under:-

19.1. In the landmark judgement of *Maneka Gandhi Vs. Union of India*¹³, the Supreme Court held that the right to life and personal

¹² 1978 (1) SCC 240

¹³ 1978 (1) SCC 248

liberty under Article 21 is not limited to mere animal 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.

19.2. In the case of *Hussainara Khatoon Vs. Home Secy., State of Bihar*¹⁴ the Supreme Court 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.”

19.3. The Supreme Court in the case of *Shaheen Welfare Association Vs. Union Of India*¹⁵ 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

¹⁴ (1980) 1 SCC 81

¹⁵ 1996 SCC (2) 616

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."

19.4. The Supreme Court in the case of *Union of India v. K. A. Najeer*¹⁶ 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 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."

20. Applicant in present case has been in custody for 7 years 6 months and 10 days. Prosecution has examined 3 witnesses until now in the past seven years after filing of the chargesheet in the year 2017. There is no possibility of the trial completing in the near foreseeable future as Prosecution desires to examine 13 more witnesses as stated in the Application. Detaining an under-trial prisoner for such an extended period violates his fundamental right to speedy trial flowing from Article 21 of the Constitution. Therefore at this juncture I deem it

¹⁶ Criminal Appeal No. 98 of 2021

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.*¹⁷ 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 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)

21. The Supreme Court has also held in a series of judgements and orders that in situations where the under-trial-prisoner / accused

¹⁷ 1992 (1) SCC 225

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.

22. In the case of *Supreme Court Legal Aid Committee (Representing undertrial prisoners) Vs. Union of India*¹⁸, 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 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 (1995) 4 SCC 695

23. In the case of *Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Anr.*¹⁹, the Supreme Court while granting bail to accused incarcerated for 4 years in paragraph Nos.16 and 17 held as under:-

“16. Criminals are not born 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 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.

17. 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.”

24. In the present matter it is seen that Applicant is incarcerated since 7 years 6 months and 10 days and though charge-sheet is filed in the year 2017 and charge is framed in 2019, till date only three witnesses are examined. Prosecution desires to examine 13 more witnesses. The trial is progressing at a snail's pace. Most importantly the Medical Report shows no injury at all to the victim. There are no statements recorded of her companion students or the tuition teacher (wife of Applicant) or any independent witness to corroborate the statement of the First Informant or that of the prosecutrix. It is only

¹⁹ (2024) 9 SCC 813

the word of the prosecutrix and the statement of the First Informant leading to indictment. Though the gravity of the offence alleged is serious in nature, it is settled law that due to delay in conducting / completing trial on part of prosecuting agency, it cannot be a ground to disentitle bail to the accused owing to accused – undertrial's fundamental right to speedy trial granted under Article 21 of the Constitution of India. *Prima facie* it is seen that there is material difference in the version / statement recorded in the FIR and the Section 164 statement of the prosecutrix which clearly is an improvement as seen. The apprehension expressed by Mr. Dedhia as well as Ms. Vardhan can be taken care of by imposing stringent conditions. In my opinion due to aforementioned *prima facie* observations and long incarceration pending trial, Applicant is entitled to bail.

25. Application is allowed on 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) Applicant shall report to the Investigating Officer of the concerned Police Station as and when called; Applicant shall not stay in the jurisdiction of the Police Station

where the prosecutrix is residing until the completion of the trial. He shall be permitted to enter the jurisdiction of the said Police Station to mark his attendance before the Investigating Officer as directed;

- (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 cancellation of this order;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v) Applicant shall deposit his passport, if any, before the Trial Court within one week from his release;
- (vi) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner and not pressurize the prosecutrix, first informant and her family members;
- (vii) Applicant shall not make any attempts to re-associate with the prosecutrix / first informant in any manner either through any device or in person;
- (viii) 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;

(ix) Any infraction of the above conditions shall entail
cancellation of this order.

26. Fees of the learned Advocate Ms. Payal Vardhan 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
and on compliance.

27. It is clarified that the aforesaid observations are *prima facie*
on the basis of record of the case which has been seen by me and is an
expression of opinion by this Court only for the purpose of
enlargement of Applicant on bail and shall not influence the trial in
any manner. The trial shall be adjudicated on the basis of evidence
and in accordance with law.

28. Bail Application is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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by HARSHADA
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