

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3037 OF 2024

Basant Motikant Mishra

.. Applicant

Versus

State of Maharashtra & Anr.

.. Respondents

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- Mr. Prashant Pandey a/w Mr. Dinesh Jadhwar, Ms. Ridhina Mangaonkar, Mr. Pramod Sharma & Mr. Rahul Sinkar i/by W3LEGAL LLP for Applicant
- Ms. Megha S. Bajoria, APP for Respondent No. 1 - State
- Mr. Brijesh Shukla i/by Mr. Kshitish Shukla for Respondent No. 2
- Mr. B. Pawar, PSI, Kurar Police Station

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CORAM : MILIND N. JADHAV, J.**DATE : MARCH 26, 2025****P. C.:**

1. Heard Mr. Pandey, learned Advocate for Applicant, Ms. Bajoria, learned APP for Respondent No. 1 - State and Mr. Shukla, learned Advocate for Respondent No. 2.

2. At the outset, Mr. Pandey would persuade the Court to allow him to amend the title clause of the present Applicant namely the first name of Applicant from "*Basan*" to "***Basant***". He would submit that Registry has raised objection to the same as the order of the trial Court did not have alphabet "*t*" in the first name of Applicant. He would submit that if any order is passed on the basis of the name "*Basan*" it will not enure to the benefit of the Applicant and therefore, he would persuade the Court to allow him to amend the first name of

Applicant in title so as to read as "*Basant*" (बसंत). In view of the request made by Mr. Pandey, leave to amend as above is granted. Amendment is permitted to be carried out forthwith. Re-verification stands dispensed with.

3. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.PC.**") in connection with Crime No. 1050/2020 registered with Kurar Police Station for offences punishable under Sections 376, 354-D, 504 and 506 of the Indian Penal Code, 1860 (for short, "**IPC**") and Sections 4, 6 and 10 of the Protection of Children From Sexual Offences Act, 2012 (for short "**POCSO Act**").

4. Applicant is arrested on 11.05.2021 and as of today he has undergone a period of detention for 3 years 10 months & 16 days. Trial has commenced as informed by the learned APP and till today witness action of three prosecution witnesses have been completed by the Trial Court. Trial is underway. Prosecutrix was 17 years old and Applicant was 24 years old at the time of the alleged incident.

5. At the outset, Ms. Bajoria, learned APP and Mr. Shukla, learned Advocate for Respondent No.2 would in tandem persuade the Court to pass appropriate directions for completing the trial in a time bound programme considering the gravity of crime in the present case.

Ms. Bajoria would persuade the Court to set a time frame of six months to the trial Court to complete the trial as she has taken instructions that every endeavour will be made by the prosecution to complete the trial.

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

7. What impels me to consider the present Bail Application are three specific grounds. Firstly long incarceration of the Applicant pending trial which is not yet completed and it would take a substantial time to complete the trial in the near foreseeable future. Secondly the order dated 28.11.2023 appended at page Nos.134-138 of the Application by which the previous Bail Application filed by Applicant was rejected by this Court on *prima facie* consideration of the prosecution case but while doing so, this Court directed the trial Court to dispose of the case expeditiously and in any event within a period of six months from 28.11.2023. Thirdly, the *prima facie* facts of the present case become more evident upon perusal of the copy of the evidence of the prosecutrix herself recorded before the Trial Court in the trial and which has been placed before the Court by the learned APP and the learned Advocate for Respondent No. 2 – prosecutrix. I have perused the same. Perusing the said evidence of the prosecutrix which is recorded when *prima facie* seen, the same is completely

contrary to the statement recorded in the FIR filed by the first informant and the statement of the prosecutrix herself which is recorded while registering the present crime. That apart, there is not only a *prima facie* dichotomy and incoherentness with respect to the specificity or narration or date of the incident in question but insofar as the alleged charge of the prosecution relating to obscene photographs is concerned, prosecutrix has completely denied that the photographs were ever be taken by the Applicant in her witness action. Learned APP has stretched this case emphasizing the gravity and heinous nature of the crime. It is unfortunate to say that learned APP has not read the papers and the deposition of the prosecutrix in the present case, otherwise such submissions would not have been made before the Court. This Court is not oblivious to the fact that presumption contained in Section 29 of the POCSO Act is required to be considered but it is made clear that the said presumption is not absolute. It is an extremely unfortunate consideration that prosecution has attempted to portray the picture of seriousness when facts of the prosecution case are completely denied by the prosecutrix in her evidence / deposition and are to the contrary rather they do not match with the statements recorded at the time of registration of the crime. The statement of the prosecutrix in evidence and her statement in the FIR do not match at all rather qua the incident it is completely

incoherent. Further the date of the first incident itself also does not match. Learned APP has referred to and relied upon the decision of the Supreme Court in the case of *X v. State of Rajasthan & Anr.*¹ to argue that this is a very heinous crime committed by the Applicant and therefore in such a case, the Applicant should be denied bail. Prosecution has also stated that it is the Applicant who is responsible for delay in conducting the trial and therefore he should be denied bail. However despite the specific direction given by this Court in its order dated 28.11.2023, the said direction has not been complied with by the prosecution and the trial Court. Applicant's long incarceration coupled with the above *prima facie* observations seen by the Court clearly entitle the Applicant to be released on bail. 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;

1 Order dated 24.02.2025 passed in Special Leave Petition (Criminal) No. 13378 of 2024

- (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 co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; Applicant shall not make any attempts to re-associate with the complainant / prosecutrix in any manner either through a device or in-person. Applicant is directed not to enter the jurisdiction of the Police Station where the prosecutrix is

residing until the completion of trial, save and except to attend the Police Station as directed herein;

(viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

8. 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.

9. Bail Application is allowed and disposed.

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[MILIND N. JADHAV, J.]

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