

Amberkar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3913 of 2024**

Rajkumar Dharmanand Yadav

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondents

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- Mr. Abdul R. Bukhari, Advocate for the Applicant.
- Mr. Balraj B. Kulkarni, APP for Respondent No.1 – State.
- Mr. Tushar Kochale a/w Dr. Ajay Jhankar and Ms. Revati Alhat, Advocates for Respondent No.2 – Victim.
- PSI – Pramod Patil, Central Police Station, Thane City.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 28, 2025

P. C.:

1. This Bail Application is filed under Section 439 of Code of Criminal Procedure, 1973 (for short '**Cr.PC.**') seeking Regular Bail. Applicant is incarcerated since 26.11.2018 in connection with First Information Report No.351/2018 (for short '**F.I.R.**') registered with Central Police Station, Ulhasnagar for offences under Section 376(2) (i) of the Indian Penal Code, 1860 (for short '**IPC**') read with Sections 4 and 12 of Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO Act**') and Sections 3(2)(W)(i) of of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (for short '**Atrocities Act**').

2. The Complainant is the mother of the victim. Date of the singular incident is 26.11.2018.

3. Prosecution case is that on the date of incident while the victim was playing in the vicinity of her house, Applicant, nextdoor neighbour, called her to his home and assaulted her.

4. Mr. Bukhari, learned Advocate appearing on behalf of the Applicant would submit that Applicant is falsely implicated in the case. He would submit that the victim was tutored by her grandmother while describing the incident before the Police officials. He would draw my attention to the clear contradiction in the version narrated in the F.I.R. as compared to the Section 164 statement. He would submit that nothing incriminating is seen in the medical examination Report of victim. In so far as charges under the Atrocities Act are concerned, he would submit that the same are invoked with a *mala fide* intention to keep the Applicant behind bars without possibility of bail. He would persuade the Court to consider the ground of long incarceration of Applicant for 6 years 3 months and 5 days and would submit that charge is yet to be framed by the Trial Court. He would submit and pray that liberty of Applicant be protected in view of his assertion that completion of trial would take a considerable amount of time since the trial has not even commenced. He would thus pray for the Application to be allowed.

5. Mr. Kulkarni, learned APP appearing on behalf of the State would submit that offence committed by the Applicant is serious.

He would submit that Applicant, if released on bail would be a danger to the Society. He would draw my attention to the provisions of Section 29 of POCSO Act to submit that the provisio impels presumption in favor of victim unless the contrary is proved, which the Applicant has failed to do and would thus vehemently oppose the Application and pray for its rejection.

6. Mr. Kochale, learned Advocate appearing on behalf of Respondent No.2 – Victim would adopt the arguments of Mr. Kulkarni, learned APP and in addition thereto would submit that the charges against the Applicant being serious does not entitle him to be released on bail.

7. I have heard Mr. Bukhari, learned Advocate for Applicant. Mr. Kulkarni, learned APP for Respondent No.1 and Mr. Kochale, learned Advocate for Respondent No.2 and with their able assistance, perused the record of the case. Submissions made by them have received due consideration of this Court.

8. The statement of Complainant in the FIR is appended at page No. 36 of the Application. She has provided in verbatim the story narrated by the victim. Victim's Section 164 statement is appended at page No. 104 of the Application. I have gone through both these statements. When perused, material facts in the version narrated in

the statement recorded under Section 164 of Cr.P.C. are *prima facie* at variance. It is seen that the version narrated in F.I.R. is a not found substantially in the statement recorded under Section 164 of Cr.P.C. The statement recorded under Section 164 of Cr.P.C. is *prima facie* concise. The Medical Report also does not show anything incriminating *prima facie*. This coupled with the fact that Applicant is incarcerated for about 6 years 3 months and 5 days pending trial without even the charge being framed against him is a strong enough reason for him to be released on bail due to his long incarceration. When an undertrial is incarcerated for such a long duration, his right to speedy trial and personal liberty flowing from Article 21 of the Constitution is heavily prejudiced.

9. In the case of *Hussainara Khatoon Vs. Home Secy., State of Bihar*¹ the Supreme Court held as under:-

“10. 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.”

¹ (1980) 1 SCC 81

9.1. The Supreme Court in the case of *Shaheen Welfare Association vs Union Of India*² dealing with a Public Interest Litigation seeking relief for undertrial 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.”

10. Applicant has no antecedents, safety of the victim and her family members can be ensured by imposing strict conditions on the Applicant. Long incarceration of 6 years 3 months and 5 days with no certainty of the trial commencing and then being completed in the foreseeable future thus entitles the Applicant for release on bail.

11. In view of the above *prima facie* observations, present 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. 15,000/- with one or two sureties in the like amount;

2 1996 SCC (2) 616

- (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 Noon for three months or as and when called;
- (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 not influence any of the witnesses or tamper with the evidence in any manner;
- (vi)** Applicant shall not enter the jurisdiction of the Police station where the FIR is registered save and except for the purpose of attending the Police Station, as directed;
- (vii)** 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;

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

12. It is clarified that the observations in this order are limited for the purpose of granting Bail only and the Trial Court in *seisin* shall proceed to adjudicate and determine the trial on the basis of evidence recorded being uninfluenced by any of the observations made herein and strictly in accordance with law.

13. Bail Application is allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

HARSHADA
HANUMANT
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by HARSHADA
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