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

BAIL APPLICATION NO.3936 OF 2024

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Rahul Basveraj Korven

... Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Sarthak P. Shetty i/by Ravishankar Dwivedi for the applicant.

Ms. Vilasini Balasubramanian for respondent No.2
(Appointed as Legal Aid Counsel)

Ms. Supriya Kak, APP for the State-respondent No.1.

Mr. Sangram A. Sable, API, Rabale MIDC Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 17, 2025

P.C.:

1. This is an application filed by the applicant under Section 439 of the Criminal Procedure Code, 1973, seeking regular bail in connection with Crime No. 56 of 2020 registered with Rabale MIDC Police Station. The offences alleged against the applicant are under Sections 341, 392, 376 and 376(D) read with Section 34 of the Indian Penal Code, 1860.

2. The brief facts of the prosecution's case are as follows: On 19th February 2020 at about 8:30 p.m., the informant, a 20-year-old woman, had requested one Samadhan Gaikwad (co-accused)

to drop her to Mumbra in an autorickshaw. However, instead of taking her to Mumbra railway station, the said co-accused allegedly took her to a building near Mahape Bus Depot and committed forcible sexual intercourse with her. Thereafter, it is alleged that two more persons arrived at the scene, took the informant forcibly on an Aactiva motorcycle to a location near a pipeline and also committed forcible sexual intercourse with her against her will.

3. The learned advocate appearing for the applicant has submitted that the applicant is one of the two persons alleged to have assaulted the victim near the pipeline. He submits that one of the co-accused who is similarly situated — being one of the two who allegedly took the victim near the pipeline and committed the offence — has already been granted bail by this Court. It is further submitted that the applicant has been in custody for more than 5 years and 4 months and that there is no likelihood of the trial concluding in the near future. Hence, the applicant seeks his release on the ground of parity with the co-accused and on account of prolonged incarceration due to delay in the conclusion of trial.

4. On the other hand, the learned APP as well as the learned advocate appointed to represent the victim have opposed the application. They submit that the offence alleged against the applicant is of a grave and heinous nature. The prosecutrix was only 20 years of age at the time of the incident. It is submitted that although on the date when bail was granted to the co-accused, the identification of the accused persons had not been established,

subsequently, in the Test Identification Parade (T.I. Parade), the present applicant has been identified by the victim. It is contended that the case involves gang rape, and in such serious offences, mere delay in trial cannot be a ground for granting bail. They rely on the settled legal position that where the nature of offence shocks the conscience of the society, the discretion to grant bail must be exercised with great caution, and considerations of parity or delay must not override the gravity of the offence.

5. After examining the statement of the prosecutrix and the material placed on record in the charge sheet, it clearly appears that the present applicant has been implicated in the second incident of forcible sexual intercourse alleged to have been committed upon the victim. The prosecution alleges that accused Nos.2 and 3, including the present applicant (accused No.3), forcibly took the prosecutrix while she was walking on the road and thereafter committed the act of sexual assault.

6. On a careful comparison of the role attributed to accused No.2 and that of the present applicant, this Court finds that their involvement is substantially identical in terms of manner, time, and location of the incident. It is further noticed that the co-accused bearing similar role (accused No.2) has already been granted bail by this Court. Moreover, there are no criminal antecedents recorded against the applicant that would place him on a different footing or disentitle him to claim the benefit of parity.

7. As regards the submission made by the learned APP that the

gravity of the offence by itself is sufficient to deny bail and that delay in trial should not be considered in such serious cases, this Court is of the opinion that no absolute or universal rule can be laid down in this regard. Each case must be assessed based on its own facts and circumstances.

8. It is necessary to underline that the right to a speedy trial is not merely statutory, but has been consistently upheld by the Supreme Court as a fundamental right under Article 21 of the Constitution. The pronouncements in *Hussainara Khatoon v. Home Secretary, Bihar* [(1980) 1 SCC 81], and *Satender Kumar Antil v. CBI* [(2022) 10 SCC 51] reinforce this principle. These judgments highlight that undue delay in trial, especially when the accused has undergone long incarceration without progress in trial, violates the constitutional guarantee of personal liberty.

9. At the same time, this Court is mindful of the caution expressed by the Hon'ble Supreme Court in *Amarmani Tripathi v. State of U.P.* [(2005) 8 SCC 21], *Mahipal v. Rajesh Kumar* [(2020) 2 SCC 118], and *Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana* [(2021) 6 SCC 230], where the Court has laid down several guiding principles to be considered while deciding a bail application — including the nature and gravity of offence, role of the accused, likelihood of tampering with evidence, and conduct of the accused during investigation and incarceration.

10. Therefore, a balance needs to be maintained between the seriousness of the offence and the right of the accused to a fair and timely trial. The power of the Court to grant bail must be exercised

after careful consideration of all relevant factors, and not merely on the ground of delay or parity alone.

11. Applying the above principles to the facts of the present case, this Court is of the view that the role of the present applicant (accused No.3) is similar in nature to that of co-accused No.2, who has already been granted bail. There is no distinguishing feature that would justify treating the present applicant differently.

12. Moreover, the applicant has already undergone incarceration for a period exceeding 5 years and 4 months, and there is no material placed before this Court to indicate that the trial is likely to conclude in the immediate future. The prolonged pre-trial detention, coupled with the benefit of parity, tilts the balance in favour of granting bail to the applicant. The reasoning adopted by the Supreme Court in Ramesh Bhavan Rathod (supra) supports this conclusion.

13. ORDER

(i) The Bail Application is allowed.

(ii) The applicant – Rahul Basveraj Korven – shall be released on regular bail in connection with Crime No.56 of 2020 registered with Rabale MIDC Police Station for offences punishable under Sections 341, 392, 376, and 376(D) read with 34 of the Indian Penal Code, 1860, on furnishing a Personal Recognizance (P.R.) bond of ₹25,000/- (Rupees Twenty-Five Thousand only) with one or more solvent sureties in the like amount.

- (iii) The applicant shall not directly or indirectly contact, threaten, harass or influence the informant, her family members, or any prosecution witnesses in any manner.
- (iv) The applicant shall not enter the locality where the informant resides, unless specifically required to do so by the Investigating Officer or as directed by a competent Court.
- (v) The applicant shall attend the trial Court on each date of hearing and shall not seek adjournments unless required for genuine and unavoidable reasons.
- (vi) The applicant shall cooperate with the trial and shall not tamper with the evidence or attempt to delay the proceedings.
- (vii) The applicant shall inform the Investigating Officer and the concerned trial Court about any change in his residential address.
- (viii) In case of violation of any of the above conditions, the prosecution shall be at liberty to apply for cancellation of bail before the competent Court.

(AMIT BORKAR, J.)