

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4499 OF 2024

Mahendra Prasad Parasanath Pandey ... Applicant

V/s.

The State of Maharashtra & Anr. ... Respondents

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Mr. Ashok Dubey with Mr. Anil Pandey i/by SAVJ Law
Solutions for the applicant.

Mrs. Mahalakshmi Ganapathy, APP for respondent
No.1-State.

Mr. Sagar A. Rane for respondent No.2 (appointed as
Legal Aid).

CORAM : AMIT BORKAR, J.

DATED : JULY 14, 2025

P.C.:

1. By the instant bail application filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 ("BNSS" for short), the applicant is seeking regular bail in connection with Crime Register No. 352 of 2020 registered with Bhivandi City Police Station for offences punishable under Section 377 of the Indian Penal Code and under Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act" for short).

2. According to the prosecution case as reflected in the First Information Report and the charge-sheet, on 26 October 2020 between 5:00 p.m. to 5:30 p.m. at the Shakradevi Temple, the accused allegedly took advantage of the minor victim by offering

him INR 40/- and thereafter committed the alleged sexual offence. The prosecution alleges that the accused opened the zip of the minor victim, put his private parts in the mouth of the child and made him perform oral sex, and also committed the act of masturbation in the presence of the minor child, thereby discharging seminal fluid on the floor of the temple premises. The prosecution further alleges that the accused spat saliva on the floor of the temple during the commission of the alleged offence. These acts, if proved, would constitute serious offences under the Indian Penal Code and the POCSO Act, which are specifically enacted to protect children from sexual abuse and exploitation.

3. The applicant herein was arrested by the Bhivandi City Police on 27 October 2020, immediately after the registration of the First Information Report. Upon arrest, he was initially remanded to police custody for the purpose of investigation, and thereafter, upon completion of police custody period, he was remanded to judicial custody. The accused has been continuously in jail custody since his arrest. The investigating agency completed the investigation and filed the charge-sheet before the competent court on 6 December 2020, which indicates that the investigation was completed within the statutory period prescribed under the Code of Criminal Procedure. The charge-sheet contains the evidence collected during investigation, including witness statements, medical evidence, and technical evidence in the form of CCTV footage of the alleged incident.

4. Learned Advocate appearing for the applicant has made detailed submissions regarding the prolonged incarceration of the

accused. He submitted that the applicant has been in continuous custody since 27 October 2020, which amounts to more than four years of incarceration without trial being completed. He brought to the attention of this Court that an earlier bail application filed by the applicant was rejected by this Court on 4 November 2023, however, at that time, this Court had granted liberty to the applicant to apply for fresh bail after the recording of evidence of the child witness. Learned counsel submitted that despite the said direction, the child witness was not examined for a period of six months thereafter, indicating delay in trial proceedings. He further submitted that although the child witness has now been examined, considering the pace of trial proceedings, it appears unlikely that the trial will be completed within a reasonable period. Therefore, he prayed for release of the applicant on the ground of unreasonable delay in completion of trial, which violates the fundamental right to speedy trial guaranteed under Article 21 of the Constitution of India.

5. Per contra, learned Additional Public Prosecutor appearing for the State and learned Advocate appointed to represent the victim have strongly opposed the bail application. They acknowledged that ordinarily an accused person becomes entitled to be released on bail on the ground of delay after undergoing incarceration for a period of four and half years in cases involving serious offences. However, they submitted that in the present facts and circumstances, the prosecution has placed strong reliance on CCTV footage which graphically records the entire incident as narrated by the victim child. They emphasized that the CCTV

panchanama, duly supported by certificate under Section 65-B of the Information Technology Act, 2000, clearly indicates the commission of the alleged offence as narrated by the victim. They further submitted that releasing the applicant at this crucial stage of trial may prejudicially hamper the progress of trial proceedings and may result in tampering with evidence or influencing witnesses. They specifically highlighted that there is a likelihood that the applicant, using his position and influence as a priest of the temple where the alleged incident occurred, may try to influence the victim child and his family members, thereby jeopardizing the fair trial. Therefore, they suggested that the liberty of the applicant and the requirement of fair trial can be appropriately balanced by directing the learned Trial Court to complete the trial within a stipulated period of one year from the date of this order. In view of these submissions, they prayed for rejection of the present bail application.

6. This Court has carefully considered the submissions made by learned counsel appearing for both sides and the material on record. The grant of bail is a matter of judicial discretion which must be exercised judiciously, taking into account various factors including the nature and gravity of the offence, the evidence against the accused, the likelihood of the accused fleeing from justice, the possibility of tampering with evidence or influencing witnesses, and the period of incarceration undergone by the accused. In cases involving offences under the POCSO Act, the courts are required to be particularly cautious as these offences involve the safety and protection of children, who are the most

vulnerable members of society. The Supreme Court in various judgments has emphasized that while the right to bail is an integral part of the right to personal liberty under Article 21 of the Constitution, this right must be balanced against the larger interests of society and the need to ensure fair trial.

7. Upon perusal of the material on record, this Court finds that the prosecution has placed on record substantial evidence in the form of CCTV footage which allegedly captures the entire incident as narrated by the victim child. The CCTV panchanama, duly supported by certificate under Section 65-B of the Information Technology Act, 2000, appears to corroborate the version of the prosecution case. The offences alleged against the applicant under Section 377 of the Indian Penal Code and Sections 4, 8 and 12 of the POCSO Act are of serious nature, involving sexual abuse of a minor child. The POCSO Act was enacted with the specific purpose of protecting children from sexual abuse and exploitation, and the legislature has prescribed stringent provisions to ensure that such offences are dealt with severity. The gravity of the alleged offence cannot be undermined, as it involves the sexual exploitation of a vulnerable child who was allegedly lured by the accused through monetary inducement. The nature of the alleged acts, if proved, would constitute a grave violation of the dignity and bodily integrity of the child victim.

8. This Court is particularly concerned about the submissions made by learned APP and learned counsel for the victim regarding the likelihood of the accused tampering with evidence or influencing witnesses if released on bail. The prosecution has

brought to the notice of this Court that the applicant held the position of priest at the Shakradevi Temple where the alleged incident occurred. This position of authority and influence in the local community creates a significant risk that the accused may use his social standing to influence the victim child and his family members. The victim being a minor child is particularly vulnerable to such influence, and any attempt to tamper with his testimony could seriously prejudice the prosecution case and defeat the ends of justice. The Supreme Court has repeatedly held that in cases involving vulnerable victims, particularly children, the courts must be extra cautious about the possibility of witness intimidation or tampering with evidence.

9. After carefully weighing all the relevant factors, this Court finds that the interests of justice would not be served by releasing the applicant on bail at this stage. The strong evidence in the form of CCTV footage, the serious nature of the offences involving sexual abuse of a minor child, the significant risk of tampering with evidence or influencing witnesses due to the accused's position as temple priest, and the need to ensure protection of the victim child, all militate against the grant of bail. The fundamental principle that justice should not only be done but should also be seen to be done requires that the trial should proceed in an atmosphere free from any pressure or influence on the witnesses, particularly the child victim.

10. However, taking into consideration the prolonged incarceration of the accused and the need to ensure speedy trial, this Court deems it appropriate to direct the learned Trial Court to

take all necessary steps to expedite the trial proceedings. The Trial Court is hereby directed to examine material witnesses within a period of six months from the date of this order. The Trial Court is further directed to conduct the trial on expeditiously and avoid unnecessary adjournments. The prosecution is also directed to ensure that all witnesses are made available for examination as per the schedule fixed by the Trial Court.

11. In view of the above discussion and analysis, this Court finds no merit in the present bail application. The application is hereby rejected.

12. However, the liberty of the applicant to apply for fresh bail is kept open, after six months in the event trial is not completed. The Trial Court is directed to complete the examination of material witnesses within six months from the date of this order and to conduct the same expeditiously to ensure speedy justice while maintaining the fairness of trial proceedings.

(AMIT BORKAR, J.)