

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4723 OF 2024**

Nitesh Raghunath Lahange ...Applicant
Versus
The State of Maharashtra & Anr. ...Respondents

Mr. Gautam T. Kanchanpurkar, for the Applicant.

Mr. Vivek Arote, Appointed as Legal Aid Counsel, for the Respondent No.2.

Ms. P. P. Bhosale, APP for the Respondent – State.

Mr. Vikas Naik, SDPO, Boisar, present.

Head Constable Jayesh Keni, S.D.P.O. Office, present.

**CORAM: MADHAV J. JAMDAR, J.
DATED: 17th MARCH 2025**

JUDGMENT:

1. Heard Mr. Kanchanpurkar, learned Counsel for the Applicant and Ms. Bhosale, learned APP for the Respondent – State.

2. This is a second Bail Application. The first Bail Application bearing Criminal Bail Application No.56 of 2024 had been allowed to be withdrawn with liberty to file a fresh Application after a reasonable period in case there is no substantial progress in the trial. The said order has been passed on 8th January 2024. The present Bail Application has been filed on 18th November 2024.

3. The relevant details are as under :-

1	C. R. No.	I-105 of 2022
2	Date of registration of F.I.R.	07.03.2022
3	Name of Police Station	Boisar Police Station, District-Palghar

4	Section/s invoked	Section 376(D), 366, 506 r/w 34 of the I.P.C., 1860
5	Date of incident	07.03.2022
6	Date of arrest	07.03.2022
7	Date of filing Charge-sheet	11.05.2022

4. It is the submission of Mr. Kanchanpurkar, learned Counsel appearing for the Applicant that although the Applicant is incarcerated for about 3 years, there is no progress in the trial. He submits that therefore as there is violation of the fundamental right of the Applicant of speedy trial the Applicant be released on bail.

5. Mr. Kanchanpurkar, learned Counsel appearing for the Applicant also pointed out various statements and material on record and submitted that Applicant is not involved in the crime and therefore, bail be granted.

6. On the other hand, it is the submission of Ms. Bhosale, learned APP and Mr. Vivek Arote, learned Counsel for the Respondent No.2 that the offence is very serious where the victim has been subjected to a 'Gang Rape' by the Applicant and three other co-accused. It is submitted that the material on record including the medical evidence supports the prosecution case and therefore, the Bail Application be rejected.

7. Ms. Bhosale, learned APP submitted that charge has been framed on 5th February 2025 by the learned Additional Sessions Judge, Palghar in Sessions Case No.56 of 2022 and the State of Maharashtra will take

effective steps for expediting the trial and to complete the same within time bound period.

8. In this Bail Application Mr. Vikas Sampat Naik, Sub-Divisional Police Officer, presently attached to Boisar Sub- Division, District- Palghar has filed detailed affidavit-in-reply dated 11th December 2024 and also filed additional affidavit dated 11th February 2025 and opposed the Bail Application.

9. The prosecution case is set out in Paragraph No.3 of the said affidavit dated 11th December 2024. The said Paragraph No.3 reads as under :-

“3. I say that the prosecution case in brief is as under:-

(a) That the Informant who is victim in the aforesaid matter lodged report at Boisar Police Station inter alia stating therein that the marriage of victim was fixed to one Ajay Kashinath Bhoir since last five months and their marriage was fixed in the month of April, 2022.

(b) It is the case of the informant that on 06.03.2022 at about 5.00 p.m. in the evening, the said Ajay Kashinath Bhoir contacted the victim over phone and told her that in his Pada i.c. Pavshetpada, Mahagaon, a marriage of Ravi Martend Wavare is to be solemnized and for that purpose, the said Ajay K. Bhoir invited the informant, hence, the victim told the said fact to her mother and she came at 7.00 p.m. on 06.03.2022 at Pavshetpada, Mahagaon in order to attend the marriage function of said Ravi Martend Wavare as per the directions of said Ajay K. Bhoir.

(c) It is the case of the informant that at about 10.00 p.m. the victim and her fiancée namely Ajay Kashinath Bhoir went to attend the said marriage ceremony of Ravi M. Wavare where they both of them dance in the said marriage.

(d) It is the case of the informant that at about 01.00 a.m. in the midnight, the victim and her fiancée namely Ajay Kashinath Bhoir came at the house of Ajay Kashinath Bhoir; at that time, the said Ajay Kashinath Bhoir went to inside his house in order to charge his mobile handset and victim was outside his house, at that time, Dilip Wavare (Complete name not known) who is friend of Pravin Kashinath Bhoir and three others came near to her; at that time, the said Dilip Wavare dragged her and he gagged her mouth and four of them hold legs and hands of victim and they took the victim at about 1 km from the house of said Ajay Kashinath Bhoir near to canal and one by one, they raped on her and thereafter her if she told anything about the said incident, then they would kill her.

(e) On the basis of the complaint, offence vide CR No.105/2022 u/secs.376(D), 366, 506, 34 of IPC registered with Boisar Police Station, Dist.: Palghar on 07.03.2022 against Dilip Wavare and his other three associates and investigation was commenced.”

Thus, as per the prosecution case, the Applicant and three other co-accused at about 1.00 a.m. dragged the victim and gagged her mouth and committed the offence of ‘Gang Rape’.

10. As per the settled legal position the following parameters are *inter alia* required to be taken into consideration while considering prayer for grant of bail :-

- a) Nature and gravity of circumstances in which offence was committed;
- b) Position and status of accused with reference to the victim and the witnesses;
- c) Likelihood of accused fleeing from justice;
- d) Likelihood of accused tampering with witnesses;

e) History of the case as well as of its investigation.

It is also a settled legal position that the Court is not required to enter into a detailed analysis of the evidence at the stage of consideration of Bail Application.

11. The Hon'ble Supreme Court in the decision of Ram Govind Upadhyay v. Sudarshan Singh¹ has held as follows :-

“4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

(Emphasis added)

¹ (2002) 3 SCC 598

12. As far as merits of the case is concerned, it is true that the Court is not required to meticulously consider the material on record at the stage of granting bail. However, for examining the case for grant of bail on the touchstone of above parameters, some factual aspects are required to be taken into consideration.

13. The material on record including the F.I.R. and the statement of the victim supports the prosecution case. In the Test Identification Parade the victim has identified the Applicant. The medical evidence also supports the prosecution case. At this stage the material on record is not required to be scrutinized very minutely. However, it is required to be noted that the material on record prima facie shows the involvement of the Applicant in the crime.

14. Ms. Bhosale, learned Counsel for the Respondent submitted that if the Applicant is released on bail there is possibility of pressurizing the victim and also that the Applicant may not be available for facing trial as the Applicant and the victim are residing in the same village and some other witnesses are also from the same village. Therefore, the possibility of tampering with the prosecution witnesses cannot be ruled out.

15. Therefore, no case is made for grant of bail on merits.

16. Insofar as the contention of Mr. Kanchanpurkar, learned Counsel

for the Applicant that there is a violation of the Applicant's fundamental right to speedy trial due to incarceration for more than three years, it is required to be noted that the offence is very serious where the victim has been subjected to 'Gang Rape' by the Applicant and three other accused. The offence is under Section 376(D) of IPC which reads as under:-

“376-D. Gang rape.- Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.]"

(Emphasis added)

Thus, the maximum punishment is imprisonment of life which shall mean imprisonment for the remainder of the natural life of the accused.

17. The Section 436(A) of the *Code of Criminal Procedure, 1973* (“CrPC”) prescribes the maximum period for which an undertrial prisoner can be detained and the same reads as follows :-

“436-A.—Where a person has, during the period of

*investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) **undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:***

*Provided that **the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period** or release him on bail instead of the personal bond with or without sureties: Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.*

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.]”

(Emphasis added)

Thus, it is clear that what is contemplated under Section 436(A) of the Cr.PC. is that the undertrial can be detained for a period extending upto one-half of the maximum period of imprisonment specified for the offence. In fact Section 436(A) of the Cr.PC. also records that after hearing the Public Prosecutor and for reasons to be recorded by the Court in writing the detention of the accused can be continued for such period longer than one-half of the period of sentence.

18. Even under Section 479 of *Bharatiya Nagarik Suraksha Sanhita, 2023* (“**BNSS**”), the said period is also one-half of the maximum period

of imprisonment or can be even one-third of the maximum period of imprisonment, in case of first time offender. Section 479 of BNSS also provides that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period.

19. Thus, it is not the mandate of Section 436(A) of Cr.P.C./Section 479 of BNSS that the undertrial can be released on bail on completion of one-half or one-third of the maximum punishment in all the circumstances, as the Court has discretionary powers in the facts and circumstances of a particular case to reject the Bail Application, even if imprisonment as contemplated under these Sections is completed.

20. As far as the Applicant is concerned there are no antecedents and therefore assuming that the Applicant can claim benefit under Section 479 of BNSS of one-third of the punishment then also the Applicant is not eligible to get the said benefit in the facts and circumstances of the case. As noted hereinabove the offence is very serious under Section 376(D), 366, 506 r/w 34 of the Indian Penal Code, 1860 where the victim has been subjected to 'Gang Rape'.

21. Mr. Vikas Sampat Naik, Sub-Divisional Police Officer has filed additional affidavit dated 14th February 2025 stating that effective steps are being taken for expeditious disposal of the trial.

22. Mr. Kanchanpurkar, learned Counsel appearing for the Applicant

relied on a Judgment of the Supreme Court in the case of ***Shaikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh***² and more particularly on Paragraph Nos.23, 26 and 30 of the same. The relevant portion of the same reads as under :-

"23. This Bench in a recent decision dated 03.07.2024 in Javed Gulam Nabi Shaikh Vs. State of Maharashtra, Criminal Appeal No. 2787 of 2024, has held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitution of India. That was also a case where fake counterfeit Indian currency notes were seized from the accused-appellant. He was investigated by the National Investigating Agency (NIA) under the National Investigating Agency Act, 2008 and was charged under the UAP Act alongwith Sections 489B and 489C IPC. He was in custody as an undertrial prisoner for more than four years. The trial court had not even framed the charges. It was in that context, this Court observed as under:

9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

23.1. After referring to various other decisions, this Court further observed as follows:

19. 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.

20. We may hasten to add that the petitioner is

² (2024) SCC Online SC 1755

still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

26. Angela Harish Sontakke Vs. State of Maharashtra is a case where the accused-appellant was charged under various provisions of the UAP Act as well as under the IPC. He sought for bail. This Court observed that, undoubtedly, the charges are serious but the seriousness of the charges will have to be balanced with certain other facts like the period of custody suffered and the likely period within which the trial can be expected to be completed. In that case, it was found that the appellant-accused was in custody since April, 2011 i.e. for over five years. The trial was yet to commence. A large number of witnesses were proposed to be examined. It was in that context that the appellant-accused was directed to be released on bail.

30.-----

30.1. Thereafter, this Court held as follows:

7.1. We are dealing with a case of the accused whose guilt is yet to be established. So long as he is not held guilty, the presumption of innocence is applicable. He cannot be deprived of all his rights guaranteed under Article 21.....”

23. It is required to be noted that in the said case of ***Shaikh Javed Iqbal*** (supra) which was before the Supreme Court. The offence was regarding fake counterfeit Indian Currency notes and offences was

under Sections 489(B), 489(C) of Indian Penal Code, 1860. In that case provisions of UAPA had also been invoked. However, it is required to be noted that in that case prisoner was behind custody for more than 4 years and even the charge is also not framed. As far as the present case is concerned as already noted hereinabove charge has been framed on 5th February 2025. Ms. Bhosale, learned APP states that witness summons has already been issued and she further states that State Government will take effective steps for conclusion of the trial in expeditious manner.

24. As per the prosecution case the victim has been subjected to 'Gang Rape' by the Applicant alongwith three other co-accused and material on record shows prima facie involvement of the accused in the offence. Therefore, no case is made out for grant of bail.

25. Accordingly, the Bail Application is dismissed.

[MADHAV J. JAMDAR, J.]