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

CRIMINAL BAIL APPLICATION NO. 4732 OF 2024

Shahu Raghunath Kadu

.. Applicant

Versus

The State of Maharashtra & Anr.

.. Respondents

-
- Mr. Shadab Khopekar, Advocate for Applicant.
 - Ms. Megha S. Bajoria, APP for Respondent No.1 – State.
 - Ms. Ashwini Achari, appointed Advocate for Respondent No.2.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 21, 2025.

P.C.:

1. Heard Mr. Khopekar, learned Advocate for Applicant; Ms. Bajoria, learned APP for Respondent No.1 – State and Ms. Achari, learned Advocate appointed through Legal Aid to represent and espouse the cause of Respondent No.2.

2. This is the 3rd Bail Application filed by Applicant under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Regular Bail in connection with C.R. No.875 of 2022 registered with Samata Nagar Police Station for offences punishable under Sections 376 and 376-AB of the Indian Penal Code, 1860 (for short “**IPC**”) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short “**POCSO Act**”).

3. Applicant before me is the sole accused and he is in incarceration since 12.06.2022 i.e. 2 years, 10 months and 10 days. 1st Bail Application of Applicant came to be rejected by this Court by order dated 29.03.2023 appended at page No.50 of the Application and the 2nd Bail Application was disposed as withdrawn.

4. Facts of the prosecution case are extremely narrow. Age of Applicant at the time of filing of FIR was 65 years and that of the victim was 4 years. First Informant is the mother of the victim. Applicant is the neighbour of First Informant who is known to family of First Informant since many years. Prosecution case is that victim used to go play and spend a lot of time at the residence of Applicant daily and also eat food over there like a family member. Victim used to address Applicant as “कड़ू बाबा”. It is alleged that since the start of May 2022, victim stopped going to the residence of Applicant and was not behaving in a normal manner which was noticed by her mother. It is stated that around 8 days prior to filing of FIR, First Informant had gone to the market alongwith victim and they met Applicant over there. When First Informant was conversing with Applicant, victim told Applicant that she will tell his name to her mother due to which Applicant left hurriedly from there. Thereafter First Informant asked victim the reason behind why she said that to the Applicant to which she confided in her by informing her that few days back when there was no one at his residence Applicant called her at his home and

committed an assault by inserting his finger in her private part after which she got scared and hence rushed to her house. She stated that as she was scared and hence did not inform anyone about the same. On 12.06.2022 FIR was lodged by First Informant against Applicant for offences under IPC and POCSO Act.

5. Mr. Khopekar, learned Advocate for Applicant would submit that Applicant is a senior citizen aged 67 years today having undergone a substantial period of 2 years, 10 months and 10 days pending trial. He would submit that even charges have not been framed till date. He would submit that there is only single incident which is alleged in the FIR and the Applicant has a long-standing family relation with the family of First Informant since both are neighbours. He would contend that Applicant has been falsely implicated in the present crime owing to strained family relations and that there is an inordinate unexplained delay in reporting the crime. He would submit that allegations in the crime are such that medical examination would be crucial to corroborate the prosecution case and in the present case the victim has refused to undertake medical examination. He would submit that no statement of neighbours have been recorded by prosecution to corroborate the guilt of Applicant. Hence there is no *prima facie* material on record to corroborate the guilt of Applicant which entitles the Applicant for grant of bail.

6. Ms. Bajoria, learned APP for State has vehemently opposed the Bail Application. She has drawn my attention to the order dated 29.03.2023 passed by this Court while rejecting the 1st Bail Application of the Applicant and would submit that the grounds for bail taken up by Applicant in the present Application have already been dealt with by this Court in that order and as such there is no change in circumstances for maintaining the present Application for grant of bail. She has drawn my attention to the statement of the victim at page No.27 of the Application and her Section 164 statement to submit that the same completely corroborates with the prosecution case. She would submit that prosecution is desirous of examining 3 prosecution witnesses in trial and the same will be completed expeditiously which would eventually prove the guilt of Applicant as there is sufficient *prima facie* material on record to establish his guilt. She would submit that offence committed by Applicant is extremely serious and its gravity needs to be taken into consideration by the Court. She would submit that enlarging the Applicant on bail may lead to he tampering with evidence as also influencing the witnesses as Applicant resides in the same vicinity as that of First Informant which would create a hurdle in the trial. Hence she has urged the Court to reject the Bail Application.

7. Ms. Achari, learned appointed Advocate for Respondent No.2 would support the arguments advanced by Ms. Bajoria, learned APP

and additionally would submit that the offence committed by Applicant is extremely serious in nature and in the peculiar facts of the present case wherein the victim used to look upto Applicant as a grand-father or father figure by addressing him as “कडू बाबा”, the gravity of offence is amplified owing to the trust reposed by First Informant’s family as also by the victim in him and he having breached the trust. She would submit that delay in reporting matters arising out of POCSO Act is not fatal to the prosecution case as the victim being a 4 year old child was scared to disclose the said incident to anyone due to which she was behaving differently as noticed by her mother. She would submit that denial to undertake the medical examination and its absence in prosecution record cannot discard prosecution case and that it is a matter of trial. However on overall consideration of the material on record, she would submit that complicity of Applicant in the present crime is *prima facie* established and hence she would urge the Court to reject the Bail Application.

8. It is trite law that successive Bail Application is permissible only in the event if there is a material change in circumstances which is the *sine qua non* for filing subsequent Bail Application. A material change in circumstances settled by law is a change in the facts, situation or law which requires the earlier view to be interfered with or where the earlier finding has become obsolete. However as can be seen from the present case apart from the period of incarceration suffered

by the Applicant, there is no change in circumstance placed on record which would impel me to otherwise take a divergent view from the view taken by the learned Single Judge who has dismissed the earlier Bail Application filed by the Applicant upon considering the merits of the matter.

9. The Supreme Court in the case of *Rajesh Ranjan Yadav Vs. CBI through its Director*¹ has observed that there is no absolute and unconditional rule about when bail should be granted by the Court and when it should not and that it all depends on the facts and circumstances of each case and it cannot be said there is any absolute rule that because a long period of imprisonment has expired bail must necessarily be granted.

10. Still since the right of bail has been exercised by the Applicant and I am of the opinion that every day's incarceration can be pleaded as a change in circumstance, I am inclined to consider the Applicant's case on its own merits as argued by Mr. Khopekar. With the able assistance of the learned Advocates at the bar, I have perused the record of the case.

11. In the present case what is *prima facie* seen is the gravity of the offence *vis-a-vis* the affinity and access of Applicant to the victim. Applicant before me is a senior citizen aged 65 years then and the

¹ (2007) 1 SCC 70

victim a minor girl aged 4 years then. *Prima facie* from the material placed on record it is seen that Applicant was virtually like a fatherly figure to the victim girl whom she addressed as “कडू बाबा”. From the statements of witnesses on record it is *prima facie* seen that the victim used to practically spend the day at the house of Applicant on a daily basis and therefore developed affinity towards him and his wife as their family were next-door neighbours and had family-like relations with them due to which they reposed full trust in them. Perusal of Section 161 statement and Section 164 statement of the First Informant as also the victim reveal serious allegation against the Applicant which are *prima facie* found to be consistent in the statements which are recorded. There is nothing placed on record for me to disbelieve those statements at this *prima facie* stage which is the only material and the said statements are consistent.

12. There is not even a single piece of *prima facie* material evidence placed on record to show that family relationship between Applicant’s family and that of the First Informant’s family were strained which is the defence taken by Applicant’s Advocate. Hence the defence of false implication owing to strained family relations adopted by Applicant cannot be accepted by me at this juncture in absence of any corroborative material though it is merely argued by Mr. Khopekar.

13. In cases of sexual offences, medical evidence, if available, is of vital importance however even if such evidence is not available or cannot be made available, it is held in a plethora of judgements that Courts should not discard the case and can rely upon the testimony of the victim alone. In this regard reference is made to the decision of the Supreme Court in the case of *Madan Gopal Kakkad Vs. Naval Dubey & Anr.*² wherein the Supreme Court has observed that rape is a crime and not a medical condition and that it is a legal term and not a diagnosis to be made by the medical officer treating the victim. In any event, Section 29 of the POCSO Act casts reverse burden of proof on the Accused to prove his innocence. Though the said presumption is rebuttable, at this *prima facie* stage there is absolutely nothing placed before me or emanating from the record to discard the prosecution case.

14. The Allahabad High Court in the case of *Pradum Singh Vs. State of U.P. Thru. Prin. Secy. Home Lko and 3 Ors.*³ has while referring to various judgments passed by the Supreme Court discussed the facet of solitary evidence of prosecutrix in cases of sexual assault. The relevant paragraph Nos.18 to 21 are reproduced below:-

"18. The Apex Court in re; State of H.P. Vs. Asha Ram, (2005) 13 SCC 766, has observed in para-5, which reads as under:-

"5. We record our displeasure and dismay, the way the High Court dealt casually with an offence so grave, as in

² (1992) 3 SCC 204
³ 2024:AHC-LKO:41454

the case at hand, overlooking the alarming and shocking increase of sexual assault on minor girls. The High Court was swayed by the sheer insensitivity, totally oblivious of the growing menace of sexual violence against minors much less by the father. The High Court also totally overlooked the prosecution evidence, which inspired confidence and merited acceptance. It is now a well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case."

19. The Apex Court in re; **Ganesan Vs. State represented by its Inspector of Police**, (2020) 10 SCC 573, while considering the judgments of **Vijay v. State of M.P.**, (2010) 8 SCC 191, **State of Maharashtra v. Chandraprakash Kewalchand Jain**, (1990) 1 SCC 550, **State of U.P. Vs. Pappu**, (2005) 3 SCC 594, **State of Punjab v. Gurmit Singh**, (1996) 2 SCC 384, **State of Orissa v. Thakara Besra**, (2002) 9 SCC 86 and **Krishan Kumar Malik v. State of Haryana**, (2011) 7 SCC 130 has observed that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

20. In the case of **Pappu** (supra), the Apex Court has held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion and that consent should be free consent.

21. The Apex Court in re; **Phool Singh v. State of Madhya Pradesh**, (2022) 2 SCC 74, has considered the judgment of **Sham Singh vs. State of Haryana**, (2018) 18 SCC 34, wherein the Apex Court has observed that the testimony of the victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should

find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable.”

15. Attention is drawn to the decision of the Supreme Court in the case of *Bhagwan Singh Vs. Dilip Kumar*⁴ wherein the Supreme Court has discussed and summarized the principles for granting bail. The relevant paragraph Nos.11, 12 and 19 are reproduced herein under:-

“Discussion and findings

11. The grant of bail is a discretionary relief which necessarily means that such discretion would have to be exercised in a judicious manner and not as a matter of course. The grant of bail is dependent upon contextual facts of the matter being dealt with by the Court and may vary from case to case. There cannot be any exhaustive parameters set out for considering the application for grant of bail. However, it can be noted that:

11.1. While granting bail the court has to keep in mind factors such as the nature of accusations, severity of the punishment, if the accusations entail a conviction and the nature of evidence in support of the accusations.

11.2. 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.

11.3. While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought to be always a prima facie satisfaction of the Court in support of the charge.

11.4. Frivolity of 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 have an order of bail.

12. We may also profitably refer to a decision of this Court in

4 (2023) SCC OnLine SC 1059

Kalyan Chandra Sarkar v. Rajesh Ranjan [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977] where the parameters to be taken into consideration for grant of bail by the courts have been explained in the following words : (SCC pp. 535-36, para 11)

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge.

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19. Similar is the opinion of this Court in Prasanta Kumar Sarkar v. Ashish Chatterjee [Prasanta Kumar Sarkar v. Ashish Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] which has held as under : (SCC p. 499, para 9)

“9. We are of the opinion that the impugned order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

*(ii) nature and gravity of the accusation;
(iii) severity of the punishment in the event of conviction;
(iv) danger of the accused absconding or fleeing, if released on bail;
(v) character, behaviour, means, position and standing of the accused;
(vi) likelihood of the offence being repeated;
(vii) reasonable apprehension of the witnesses being influenced; and
(viii) danger, of course, of justice being thwarted by grant of bail.”*

15.1. In the above matter the Supreme Court relying on the gravity of allegations levelled by victim in the FIR which were corroborated by the Section 164 statement of victim, cancelled the bail granted to the Accused therein by the High Court.

16. Similar is the present case where allegations are so serious that it shocks the conscience of the Court. Applicant and victim were neighbours. Their neighbourly relations were spoken highly even by First Informant - mother of victim due to the trust established between their families as seen from First Informant's statement. Such relations led to the victim spending her entire time in the Applicant's household. She stayed in Applicant's house and even had her meals over there. The trust shown by her family in the Applicant was about setting an example for neighbourly brotherhood relations in today's times. Sadly, the Applicant's behaviour eroded the trust between the families and the victim is the 4 year old girl in this case.

17. *Prima facie* there is material on record to show that Applicant committed the offence as per prosecution case. Prosecution

case is that Applicant who was a fatherly figure to victim committed the assault which in the opinion of this Court would have scarred the tender mind of the victim which is exhibited by her behaviour as stated by the First Informant - mother. Rather such an act is an act against the Society at large as one of the principal object of the POCSO Act is to ensure that the tender age of the child is not abused and their childhood is protected against exploitation.

18. Reference is made to the decision of the Delhi High Court in the case of *Subhan Ali Vs. State NCT of Delhi and Anr.*⁵ wherein in an identical case, the Delhi High Court refused bail to the Applicant therein while observing as follows:-

“9. This case reflects the profound trauma suffered by the victim, a minor, at the hands of a person she trusted - her neighbour, in whose house she had gone to play, and whom she addressed as chacha. It is a stark reminder of an unfortunate reality frequently observed by courts, where acts of sexual assault against children are often committed by individuals who occupy positions of trust or confidence in the child's life. Such relationships of familiarity and trust not only provide perpetrators access to the child but also magnify the betrayal and lasting impact of the crime. The victim in this case, despite her young age, demonstrated commendable courage by confiding in her school teacher, as she was unable to bear the trauma caused by the violation of her body and dignity. The Principal and teacher, instead of silencing or ignoring the child's plight, acted responsibly and informed the parents, which led to the registration of the present FIR. Their actions serve as a commendable example of the importance of supporting victims in such situations.

10. It is the duty of the Courts to recognize the broader implications of such heinous acts. One must always remember that crimes of sexual assault against minors are not just violations of their physical integrity but also attacks on their innocence and sense of safety, and often leave permanent

5 2025 SCC OnLine Del 297

psychological scars. When such offences are committed by individuals the victim trusts, the impact is even more severe, both for the victim and society at large. Therefore, in cases like the present, the Courts must send a strong and clear message, through its orders and judgments, that such acts will not be condoned and that the justice system will act decisively to protect the most vulnerable members of society.”

(emphasis supplied)

19. In the case of *Eera Vs. State (NCT of Delhi)*⁶ the Supreme Court has made observations regarding the Statement of Objects and Reasons of POCSO Act in paragraph No.20 which reads as under:-

“20. The purpose of referring to the Statement of Objects and Reasons and the Preamble of the POCSO Act is to appreciate that the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of the Preamble, it is manifest that it recognizes the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child. Best interest and well-being are regarded as being of paramount importance at every stage to ensure the healthy physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The Statement of Objects and Reasons provides regard being had to the constitutional mandate, to direct its policy towards securing that the tender age of children is not abused and their childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing child friendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the POCSO Act.”

20. Considering the principles laid down by the Supreme Court for grant of bail and the citations as delineated herein above *vis-a-vis*

⁶(2017) 15 SCC 133

the gravity of the offence and more particularly the nexus between the parties, no case for grant of bail is made out by the Applicant.

21. Though this Court has in numerous cases taken cognizance of the fundamental right to speedy trial and personal liberty granted to undertrial – accused under Article 21 of the Constitution of India in view of the long incarceration suffered by the undertrial – accused and released them on bail owing to no possibility of completion of trial in the near foreseeable future, the case at hand carves out an exception in my opinion. The trust and faith reposed in the Applicant is completely eroded and shattered by him. The allegations of offence in the present case is of such a serious nature that grant of bail would amount to sending a wrong message or signal to the Society at large as the sanctity of pure and innocent relationship as delineated is decimated by the Applicant before me by sexually assaulting the victim aged 4 years old who adored him and called him “कड़ू बाबा” which literally means a father figure.

22. In view of my above *prima facie* observations, no case for grant of bail is made out by the Applicant.

23. It is clarified that the observations made in this order are limited for the purpose of adjudication of the Bail Application and the trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced by any of the *prima facie*

observations made herein above in this order.

24. Fees of the Ms. Achari, learned Advocate appointed through Legal Aid to represent and espouse the cause of Respondent No.2 shall be released by the Registry of this Court within a period of one week from the date of presentation of a server copy of this order on compliance.

25. Bail Application is dismissed.

[MILIND N. JADHAV, J.]

Ajay

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by AJAY
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