

Ajay

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

CRIMINAL BAIL APPLICATION NO. 4943 OF 2024

Deeplal Baiju Rai

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondents

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- Mr. Karan Kadam, Advocate for Applicant.
- Ms. Megha S. Bajoria, APP for Respondent No.1 – State.
- Ms. Ekta Patil, Advocate for Respondent No.2 appointed through Legal Aid.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 24, 2025.

P.C.:

1. Heard Mr. Kadam, learned Advocate for Applicant. and Ms. Bajoria, learned APP for Respondent No.1– State and Ms. Patil, learned Advocate for Respondent No.2 appointed through Legal Aid.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.I-231 of 2021 registered with Bhiwandi Police Station for the offences punishable under Sections 376-AB and 363 of the Indian Penal Code, 1860 (for short ‘**IPC**’) and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short “**POCSO**”). Applicant is arrested on 01.07.2021 and he is incarcerated for 3 years 9 months 24 days.

3. Mr. Kadam, learned Advocate for Applicant has made the following submissions in support of Bail Application. He would submit that Applicant is incarcerated in the present crime solely on the basis of circumstantial evidence. He would submit that there is no eye witness to the alleged incident of kidnapping or molestation as alleged by prosecution. He would submit that Applicant is incarcerated for more than 3 years, 9 months and 24 days pending trial, that there is no certainty that the trial would be completed in the near foreseeable future and hence he would persuade the Court to consider his Application for grant of bail;

3.1. He would submit that circumstantial evidence in the present case is based upon finding of mobile phone and one slipper of Applicant near the alleged scene of crime i.e. the temple and this by itself cannot be such an incriminating evidence to allege presence of Applicant at the incident spot. He would submit that there is no eye witness to the incident of kidnapping of the 1 and a ½ year old girl at about 01:30 a.m. in the night from the house where according to prosecution she was sleeping next to her father and also to establish the allegation that Applicant kidnapped the girl at about 01:30 a.m., thereafter took her to a place near the village temple, molested her and left her there then to be found at about 9:10 a.m. in the morning. However, he would submit that according to the history narrated by First Informant mother at the time of physical examination at Indira

Gandhi Memorial Hospital appended at page No. 89 that the daughter was found at her doorstep.

3.2. He would submit that the prosecution is relying upon the witness statements of one co-worker residing with the Applicant who worked with him in the same Company which is appended at page No. 57 of the Application stating that on the night of the incident Applicant did not return back to the room in which he was residing and remained out for the whole night. It is further stated that Applicant did not answer his calls and in the morning on reaching the Company approached his employer to settle his dues so that he could proceed to his village, thus implying that Applicant may have had a role in the crime in question. He would submit that prosecution has also relied upon the statement of the shop owner from where Applicant bought a new pair of slippers on 30.06.2021, however this does not establish a direct link of Applicant to the alleged crime.

3.3. He would submit that another piece of circumstantial evidence which the prosecution has relied upon is of finding one slipper of Applicant near the house of the victim but according to him it is unfathomable for the Applicant to walk with one slipper upto the village temple which was at the distance of almost 1.5 kms. from the house of the victim. He would submit that no corroboration or link of Applicant to the alleged crime is established by the prosecution which

makes the prosecution case highly questionable. To support his submissions he has referred to and relied upon the decision of the Supreme Court in the case of *Allarakha Habib Memon Etc. Vs. State of Gujarat*¹.

3.4. He would submit that prosecution case is solely based on circumstantial evidence. He would submit that Applicant is the sole breadwinner of his family and has no criminal antecedents. He would submit that Applicant is arrested on 01.07.2021 and he is incarcerated for 3 years 9 months 24 days, pending trial. He would submit that investigation is completed, chargesheet is filed, commencement and completion of trial in the near foreseeable future is doubtful. Hence he would urge the Court to allow the Application.

4. *PER CONTRA*, Ms. Bajoria, learned APP appearing for Respondent No.1 – State has vehemently objected to the release of the Applicant on bail. On the issue of long incarceration of Applicant and charges not having been framed till today, the learned Prosecutor has been fair to the Court in informing that the Court may pass any appropriate order as deemed fit. However, she would submit that the gravity of offence be considered as it is serious in nature. She would submit that circumstantial evidence which has been placed on record by prosecution directly shows and reflects Applicant's role and direct involvement in the crime.

¹ 2024 SCC OnLine SC 1910

4.1. She would submit that the fact that his mobile phone and one slipper was found near the scene of crime shows his complicity and involvement in the crime. She would submit that the age of the victim is 1 and ½ years and Applicant's tendency is also borne out from one of the witness statement who has stated that some days prior to the date of present incident he had seen Applicant wandering late in the night in that vicinity all alone. She would therefore submit that considering the gravity of the crime in question, the Application be rejected.

5. Ms. Patil, learned appointed Advocate for Respondent No. 2 through the legal aid would adopt the submissions advanced by Ms. Bajoria. Additionally she would persuade me to consider the age of prosecutrix and argue that considering that facet it is likely that Applicant had kept an eye on victim's house and took a chance of victim's mother leaving the house to go to the washroom at night and committed the crime. She would submit that Applicant's absence from his rented room and discovery of his mobile phone and one slipper near the victim girl and his other slipper near victim's house is a strong circumstantial evidence against Applicant. She would submit that his subsequent action of demanding his dues from his employer was with the intention to escape to his village shows and reflects the direct

linkage to the alleged crime. hence she would urge the Court to reject the Application.

6. I have heard the learned Advocates at the bar and with their able assistance perused the record of the case.

7. *Prima facie* it is seen that case of the prosecution is solely based on circumstantial evidence. There is no eye witness statement to the incident of kidnapping of 1 and ½ year old victim. According to the prosecution, the mother of the victim at 01:30 a.m. in the night left their house to go to the washroom, however on returning she saw the door open and victim who was sleeping next to her father was missing and at 09:00 a.m. in the morning she was found in the compound of the village temple. *Prima facie* it is seen that there is clear improvisation in the statement of First – Informant i.e. the mother of the victim recorded on 02.07.2021 appended at page No. 20 and the statement recorded in the FIR on 30.06.2021 appended at page No. 22 read at page No. 24 of the Application.

8. *Prima facie* the refusal of victim's parents for Medico - Legal Examination in the first instance needs to be considered. Medical Report *prima facie* suggest that molestation has taken place. The victim was thereafter reunited with her parents. Case of the prosecution is based on a strong circumstantial evidence namely the fact that mobile phone of the Applicant and one slipper of Applicant

was found in the vicinity of the village temple where the victim was found at about 09:00 a.m. in the morning. Another circumstantial evidence with the prosecution is relying upon is finding of another slipper of Applicant near the house of the victim. Admittedly house of the victim and the village temple are at a distance apart. The prosecution investigated the matter but there is no eye witness who has stated of having seen Applicant moving suspiciously in the morning and at night or having kidnapped the victim from her house in the middle of the night while her mother was away and the victim was sleeping next to her father. There is a clear discrepancy in the statement of the first informant appended at page No.89 wherein she states that the victim was found at the doorstep of their house. This dichotomy is very crucial.

9. Circumstantial evidence of any nature needs to be strongly corroborated on the basis of incriminating fact. The preponderance of probability in the case of criminal jurisprudence does not apply at a *prima facie* stage. Undoubtedly in evidence at the time of trial prosecution will be at liberty to prove its case on the basis of the available material evidence placed on record to prove the guilt of the Applicant. However the key question before me is whether further incarceration of Applicant is warranted in the present facts and circumstances?

10. The only material placed before the Court to *prima facie* come to the conclusion regarding the complicity of the Applicant in crime is about the mobile phone and one slipper of the Applicant which has been recovered from village temple compound by the prosecution. It is also prosecution case that the the second slipper of the Applicant was recovered near the house of the victim. *Prima facie* it is incomprehensive that Applicant would have walked alongwith one slipper right upto the temple.

11. Be that as it may, the circumstantial evidence needs to be strong enough for the Court to come to the conclusion that Applicant had a direct / primary role in the alleged crime. Save and except the aforesaid circumstance, there is no other incriminating material which *prima facie* corroborates the prosecution case that Applicant kidnapped the victim from her house, took her to the village temple and molested her.

12. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the Court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents are required to be considered in such cases.

13. Multiple decisions of the Hon'ble Supreme Court and various other High Courts have favoured the release of offenders on bail pending trial so that the regressive influences of jail environment can be avoided and keeping in mind the principle of best interest in the aforesaid circumstances.

14. That apart, Applicant is the sole breadwinner of his family having deep roots in Society and has no criminal antecedents. Applicant is incarcerated for more than 3 years 9 months and 24 days, pending trial. Charges have been framed. Commencement and completion of trial in the near foreseeable future is doubtful. Further incarceration of the Applicant is unwarranted in the aforementioned *prima facie* facts and circumstances. Hence I am of the opinion that Applicant can be released on bail.

15. Bail Application is allowed subject to 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;
- (ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;

- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (v) 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;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (viii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; Applicant shall not make any attempt to re-associate with the prosecutrix in any manner either through a device or in-person; and

(ix) In case of any infraction of the above conditions and /
or two consecutive defaults in marking his attendance
before trial Court, it shall attract the provisions of
Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

16. It is clarified that the observations made in this order are limited for the purpose of granting bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

17. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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