

Shabnoor

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

BAIL APPLICATION NO.5312 OF 2024

Sanullah Mehabud Idrisi

... Applicant

V/s.

State of Maharashtra & Anr.

... Respondents

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Ms. Neetu Singh, for the Applicant.

Ms. Pallavi N. Dabholkar, APP for State – respondent
No.1.

Mr. Viral Mukte for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : JUNE 27, 2025

P.C.:

1. This is an application filed under Section 439 of the Code of Criminal Procedure, 1973, whereby the applicant seeks his release on bail in connection with Crime Register No. I-821 of 2019 registered with Tulinj Police Station, District Palghar, for offence punishable under Section 376 of the Indian Penal Code, 1860, and under Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. According to the prosecution, the applicant aged about 39 years assaulted a minor 4 years daughter of the informant by touching the minor girl's private part. According to the prosecution, the assault is supported by the medical examination

of the minor girl, which shows fresh contusion marks. The applicant was arrested on 14 July 2019. The prosecution case, as presented, reveals that the accused person, who is a mature adult of 39 years of age, is alleged to have committed sexual assault upon an innocent child of tender age, being merely 4 years old. The gravity of such allegations cannot be understated, as they involve the violation of the dignity and bodily integrity of a child who is incapable of understanding the nature of such acts or protecting herself from the same. The prosecution has relied upon medical evidence in the form of examination of the victim child, which allegedly reveals fresh contusion marks, thereby providing corroborative support to the allegations made by the informant. The fact that the accused was arrested on 14 July 2019 indicates that the investigation authorities found sufficient prima facie evidence to warrant his detention.

3. Earlier two bail applications filed by the applicant were rejected by this Court. However, on 27 June 2024, this Court directed the Trial Judge to complete the trial within 4 months from the said order. The applicant is at liberty to make an application for release on bail only on that ground. Despite such specific directions, there is absolutely no progress in the trial, even not a single witness has been examined by the Trial Court though the complainant and the accused were present on earlier occasions. This is an unfortunate state of affairs. However, the right of the applicant under Article 21 of the Constitution of India cannot be taken away due to such events. Therefore, in recognition of the right under Article 21 of the Constitution of India and without

commenting on merits, the applicant is entitled to be released on bail only on the ground of delay in trial. The applicant deserves to be enlarged on bail. Nevertheless, to ensure that there is no misuse of liberty or any apprehension of threat or undue influence on the victim or her family, appropriate stringent conditions need to be imposed.

4. This Court while rejecting earlier bail had also specifically recorded that the applicant would be at liberty to make a fresh application for release on bail solely on the ground of delay in trial, thereby keeping open the possibility of bail consideration if the trial did not proceed as directed. This provision was made in recognition of the principle that no person should be kept in custody indefinitely without trial, irrespective of the nature of allegations against him.

5. However, the present situation reveals a complete failure on the part of the trial court to comply with the specific directions issued by this Court. Despite the clear mandate to complete the trial within 4 months, there has been absolutely no progress in the trial proceedings. What is more disturbing is the fact that not even a single witness has been examined by the learned Trial Court, despite the complainant and the accused being present on earlier occasions.

6. Such delay in trial proceedings, especially in cases involving serious allegations, is indeed an unfortunate state of affairs that undermines public confidence in the justice delivery system. The failure to examine even a single witness despite the presence of

parties indicates systemic issues that need to be addressed urgently. However, the Court cannot allow such administrative failures to prejudice the fundamental rights of the accused person.

7. The fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India is the most precious right available to every citizen, including an accused person. This right encompasses not only the right to physical existence but also the right to live with dignity and the right to speedy trial. The Supreme Court of India, in numerous judgments, has held that prolonged detention without trial violates Article 21 of the Constitution.

8. In the present case, the accused person has been in custody since 14 July 2019, which amounts to approximately 5 years of incarceration without trial. Such prolonged detention, especially in the absence of any progress in trial, raises serious concerns about violation of constitutional rights. The Court cannot allow the administrative failure of the trial court to result in indefinite detention of the accused person.

9. Therefore, in recognition of the right under Article 21 of the Constitution of India and without commenting on the merits of the case, this Court finds that the applicant is entitled to be released on bail solely on the ground of delay in trial. The grant of bail in this case is not based on the strength or weakness of the prosecution case, but purely on the constitutional principle that no person should be kept in custody indefinitely without trial.

10. The Court emphasizes that the grant of bail should not be construed as an opinion on the merits of the case or the guilt or innocence of the accused. The allegations against the accused are serious in nature, and the trial court will examine the evidence and determine the guilt or innocence of the accused in accordance with law.

11. In view of the above analysis and considering all relevant factors, the applicant deserves to be enlarged on bail solely on the ground of inordinate delay in trial, subject to appropriate conditions to be imposed by this Court. The grant of bail is a recognition of the constitutional rights of the accused while ensuring that the interests of justice are not compromised.

12. Hence, the following order :

(a) The Bail Application stands allowed.

(b) The applicant, shall be released on bail in connection with Crime Register No. I-821 of 2019 registered with Tulinj Police Station, District Palghar, for offence under Section 376 of IPC, and under Sections 4, 8 and 12 of POCSO Act, on executing a Personal Bond in the sum of ₹25,000/- (Rupees Twenty-Five Thousand only) with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court.

(c) The applicant shall not directly or indirectly make any contact with the victim and her family members or any prosecution witnesses, and shall not tamper with the

evidence in any manner.

(d) The applicant shall report to the concerned police station once in every month (i.e., on 1st day of every month) between 10:00 a.m. to 12:00 noon, until further orders.

(e) The applicant shall not enter the locality where the victim resides and shall maintain a minimum distance of 500 meters from the place of the alleged incident.

(f) The applicant shall furnish his current residential address and mobile number to the Investigating Officer, and shall inform the Investigating Officer of any change in address or contact details forthwith.

(i) In case of any breach of the conditions mentioned above, the prosecution shall be at liberty to move for cancellation of bail.

13. The Bail Application stands disposed of accordingly in above terms.

(AMIT BORKAR, J.)