



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 351 OF 2025

Vishal Vilas Nakhate } Applicant

V/s.

State of Maharashtra and Anr. } Respondents

Mr. Satyavrat P. Joshi with Yash Fadtare, for the applicant.

Shri. Y.Y. Dabke, APP, for the Respondent / State.

Ms. Ruchita Varma, for Respondent no. 2.

CORAM : N.J. JAMADAR, J.

DATED : 7th APRIL 2025

ORDER:

1. The applicant, who is arraigned in Special Case No. 315 of 2021, arising out of C.R No. 55 of 2021 registered with Chandannagar Police Station, Pune for the offences punishable under Section 376, 376 (3) of the Indian Penal Code ('IPC') and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO, Act') has preferred this application to enlarge him on bail.

2. In fact, this is the second application for bail. The first bail application, being Bail Application No. 4087 of 2021, came to be dismissed as withdrawn, by an order dated 1st July 2022.

3. By the said order, the learned Special Judge was requested to make an endeavour to conclude the trial as expeditiously as possible.

4. The gravamen of indictment against the applicant is that the applicant had befriended a 14 year old daughter of the first informant. On the night intervening 25th and 26th February 2021, at about 2:45 am, the first informant noticed that the child was not on her bed. When the first informant looked around for the child, she found that in the hall, the applicant was having sexual intercourse with the child. When the first informant tried to catch hold of the applicant, the later fled away by jumping over the compound wall of the house of the first informant.

5. Mr. Joshi, learned counsel for the applicant, submitted that at the time of the alleged occurrence the applicant was barely 19 years of age. The applicant and the child were in a relationship. Despite a direction by this Court to conclude the trial expeditiously, there has not been any progress in the trial. In fact, the trial could not proceed as the muddemal articles were not produced by the prosecution. The applicant has been in custody for more than 4 years.

6. In these circumstances, according to Mr. Joshi, the fundamental right of the applicant to speedy trial has been jeopardized. Such a long period of incarceration, without any prospect of conclusion of the trial, renders the further detention of the applicant foul of right to life guaranteed under Article 21 of the Constitution of

India. Therefore, the applicant deserves to be enlarged on bail on account of long period of incarceration.

7. To buttress this submission, Mr. Joshi placed reliance on decisions of the Supreme Court in the cases of *'Mohd. Muslim alias Hussain Vs. State (NCT of India)*¹, and *Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Anr.*² Mr. Joshi laid emphasis on the fact that despite the statutory restrictions in the matter of grant of bail under the provisions of the the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS, Act') and the Unlawful Activities (Prevention) Act, ('UAPA, Act'), the Supreme Court has granted bail on account of prolonged period of incarceration.

8. In opposition to this, Mr. Dabke, learned APP would urge that the prosecution proposes to examine the victim and five witnesses. The trial would not take much time. Therefore, having regard to the gravity of the accusation and the circumstances of the case, the applicant does not deserve to be enlarged on bail.

8. Ms. Ruchita Varma, learned counsel for respondent no. 2 – victim also resisted the prayer for bail. Attention of the Court was invited to the medico-legal examination of the child which indicates that, the victim had been subjected to sexual intercourse.

9. As noted above, the first application was withdrawn as this Court, having regard to the nature of the accusation, had declined to entertain the prayer for bail. The allegations against the applicant are

1 (2023) SCC online SC 352

2 (2024) SCC online SC 1693

indeed grave. The child was barely 14 year of age. The statements of the first informant and the family members of the child indicate the circumstances in which the applicant was allegedly found violating the child, in the house of the first informant at the dead of the night. The medico legal examination report lends, prima faice, support to the allegations of the child having been sexually exploited repetitively.

10. The nature of the allegations, the circumstances of the case and the audacity with which the applicant sexually exploited the child in her own house at the dead of the night, dissuades the Court from exercising the discretion in favour of the applicant.

11. It is true, the applicant has been in custody since 26th February 2021 and despite the directions by this Court, the trial had not commenced.

12. In these circumstances, this Court had called a report from the learned Sessions Judge seized with Special Case No. 315 of 2021. The learned Sessions Judge reported that the Special Case No. 315 of 2021 was pending on the file of a Court which is vacant. Therefore, the trial could not proceed.

13. If Court was vacant, the trial in Special Case No. 315 of 2021 ought to have been transferred to another Court. At the same time, the Court cannot loose sight of the underlying object of enactment of the Protection of Children From Sexual Offences Act, 2012. Nor the fact that the child was barely 14 years of age can be ignored. The offence, if proved, may fall with the dragnet of Section

376(3) which entails punishment of rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder life. Moreover, the circumstances in which the applicant was allegedly found exploiting the child in her own house and the shock and trauma caused to the parents of the child, aggravates the gravity of the accusation against the applicant.

14. In these circumstances, in my considered view, keeping the competing interest of the victim in view, it may not be expedient to release the applicant on bail. A direction for transfer of the Special Case No. 315 of 2021 to a regular Court and conclusion thereof within a time frame would, however, be warranted.

15. Hence, the following order:

ORDER

- I) The application stands rejected.
- II) The Sessions Judge, Pune is directed to transfer the Special Case No. 315 of 2021 from the vacant Court to a regular Court of Sessions dealing with POCSO cases, immediately.
- III) The learned Sessions Judge to whom the Special Case No. 315 of 2021 would be transferred is requested to make an endeavour to conclude the trial in Special Case No. 315 of 2021 as expeditiously as possible and,

preferably, within a period of six months from the date of transfer of the case to the said Court.

- IV) The prosecution shall not seek any adjournment.
- V) The applicant shall also co-operate in expeditious conclusion of the trial.
- VI) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

(N.J. JAMADAR, J)