

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1295 OF 2025

Amar Balkrishna Gole.

...Applicant.

Versus

State of Maharashtra & Anr.

...Respondents.

Mr. Prasad Avhad i/b. Mr. Kuldeep Nikam (appeared through V.C.), Advocate for the Applicant.

Ms. Anamika Malhotra, APP for the Respondent/State.

Ms. Deepali Bagla, Advocate for Respondent No. 2.

CORAM: ASHWIN D. BHOBE, J.

DATED: 4th SEPTEMBER, 2025.

PC:-

1. Heard Mr. Prashad Avhad, learned Advocate for the Applicant, Ms. Anamika Malhotra, learned APP for State and Ms. Deepali Bagla, learned Advocate for Respondent No. 2.

2. By the present Application filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS"), the Applicant is seeking regular bail in Crime No. 180 of 2017 registered with Haveli Police Station, Pune for the offences punishable under Section 384, 385, 376(j) of the Indian Penal Code (for short "IPC") and under Sections 3, 4, 5, 6 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act") and Section 67 of the Information & Technology Act. Said Crime is registered as Special

Case Child Prot. No. 384 of 2017 and is pending before the Court of Additional Sessions Judge, Pune. Applicant was arrested on 24th May, 2017.

3. Mr. Prasad Avhad, learned Advocate for the Applicant submits that the Applicant is seeking bail on the sole ground of prolonged incarceration. He submits that the Applicant is behind bars continuously from 24th May, 2017. He submits that though the charge is framed on 30th September, 2019, till date not a single witness has been examined. He therefore, presses the right of the Applicant of denial of speedy trial.

4. Ms. Malhotra, learned APP for the State does not dispute the fact that the Applicant is in jail from 24th May, 2017. She further submits that the prosecution evidence has not commenced though the charge is framed on 30th September, 2019.

5. Ms. Deepali Bagla, learned Advocate for the Respondent No. 2 submits that the offence is serious crime, wherein the Respondent No. 2 (victim) was sexually abused at the hands of the Applicant. She submits that records viz. the FIR would indicate that the Applicant after having committed the sexual assault on the Respondent No. 2 had threatened the Respondent No. 2 and her family members of dire consequences. She however, does not dispute the Applicant being in jail from 24th May, 2017. She expresses apprehension of the Applicant executing threats that were issued to the Respondent No. 2 prior to Applicant being taken in custody.

6. Perused the record with the assistance of the learned Advocates for the parties.

7. Applicant is in jail for almost 8 years and 3 months since his arrest, which was effected on 24th May, 2017. As submitted by the learned Advocate for the parties, though the charge was framed, as way back as on 30th September, 2019 not a single prosecution witness has been examined.

8. The Hon'ble Supreme Court in the case of *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Asnari v/s. State of Uttar Pradesh*¹ has observed thus :

“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 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.

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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

1 (2024) SCC Online SC 1755

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.

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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.....

32. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.”

9. Considering the factual situation i.e. the prolonged incarceration of the Applicant and the observations of the Supreme Court in *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Asnari (supra)*, this Court is compelled to enlarge the Applicant on bail on sole ground of his long incarceration.

10. Apprehension expressed by the learned Advocate for the Respondent No. 2 can be taken care of by imposing stringent conditions on the Applicant.

11. Mr. Prasad Avhad, learned Advocate for the Applicant on instructions from the Applicant states that the Applicant shall not enter the jurisdiction of

Pune District till the conclusion of the trial in Special Case Child Prot. No. 384 of 2017. Statement is accepted.

12. In view of the above, Bail Application is allowed on the following conditions :

(a) Applicant be released on bail in Crime No. 180 of 2017 registered with Haveli Police Station, Pune upon furnishing PR. Bond in the sum of Rs. 25,000/- with one or two local sureties in the like amount to the satisfaction of the learned Additional Sessions Judge, Pune.

(b) Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade such person from disclosing the facts to Court or any Police Officer. The Applicant shall not tamper with evidence.

(c) Applicant upon release within 3 days shall furnish his residential addresses with proof and contact details to the Investigating Officer, Haveli Police Station, Pune.

(d) Applicant shall not contact Respondent No. 2 or any of her family members in any manner.

(e) Applicant shall attend each and every date of hearing in Special Case Child Prot. No. 384 of 2017 before the Additional Sessions Judge, Pune, unless exempted.

(f) Applicant shall not enter the territorial jurisdiction of Pune District till the conclusion of the trial in Special Case Child Prot.

No. 384 of 2017 except for attending hearing in Special Case Child Prot. No. 384 of 2017 before the learned Additional Sessions Judge, Pune.

(g) In the event of breach of any of the conditions and/or any attempt made by the Applicant to influence or threaten of prosecution witnesses/victim, shall entail cancellation of this bail.

13. Bail Application No. 1295 of 2025 is allowed and disposed of on the above terms.

(ASHWIN D. BHOBE,J.)