



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.58 OF 2025

(Sheikh Sohel Sheikh Sajid and ors. Vs. State of Maharashtra and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. I. Deshmukh, Advocate h/f Mr. Y. Dhande, Advocate for the
applicants.

Mr. C.A. Lokhande, APP for the State.

Mr. R.M. Daga, Advocate a/w Ms C.S. Bhute, Advocate for non-
applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- MARCH 28, 2025.

The present application is filed by four applicants who are accused Nos.1, 2, 4 and 5 respectively for grant of bail as they came to be arrested in connection with Crime No.737/2018 registered with the police station Arni, District Yavatmal for offences punishable under Sections 376(3), 376(D)(A), 376(2)(f)(j)(n), 354-D, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3, 8, 10, 12, 14 and 25 of the Protection of Children from Sexual Offences Act, 2012 and Sections 67(A), 67(B) and 66(E) of the Information Technology Act, 2000.

2. The crime is registered on the basis of a report lodged by the father of the victim girl stating about the forcible sexual intercourse committed with his daughter on various occasions by the accused persons who are charge-sheeted in the instant offence. He further

alleged that his daughter was given some stupefying substance and under the influence of the same, forcible sexual intercourse was committed. The age of the victim girl at the time of the incident was only 13 years. Upon receipt of such complaint the crime was registered and during investigation, the Investigating Officer investigated the same and completed the investigation and submitted the charge-sheet. The complainant has filed a Criminal Writ Petition bearing No.1123/2018 before this Court seeking transfer of Investigation from Police Station Arni to any other independent Agency. The said Writ Petition came to be disposed of by an order dated 17/01/2019 and the investigation in the crime was directed to be transferred to the Crime Investigation Department Unit of Amravati Division, Amravati. After completion of the investigation, the charge-sheet was filed and after filing of the charge-sheet the learned trial Court has framed the charge. The Hon'ble Apex Court expedited the trial; however, the trial is not concluded, and therefore, the present application is filed by the applicants on the ground that there is inordinate delay in trial. Therefore, the right of the present applicants as to the speedy trial enshrined under Article 21 Constitution of India is affected. For this ground, they be released on bail.

3. Learned Counsel for the applicants submitted that considering the fact that the applicants are behind bar since the date of their arrest i.e. more than six years. There is no progress in the trial, only 9 witnesses are

examined, therefore, the right of the present applicants as to the speedy trial enshrined under Article 21 of the Constitution of India is affected, and therefore, they be released on bail.

4. Learned Counsel for the applicants further invited my attention towards the earlier orders passed by this Court on 23/09/2024 wherein this Court has observed that considering the report of the District Judge, it is expected that the prosecution as well as the defence Counsel to cooperate with the Court to comply with the directions of the Hon'ble Apex Court. It reveals from the report and the various orders passed by the District Court that not only the defence counsel but the prosecution has also sought many dates, due to which the directions of the Hon'ble Apex Court are not complied with. In view of that, it is necessary to direct the trial court as well as both the parties to cooperate with the Court to dispose of the case within three months.

5. In view of that, the earlier application was withdrawn, and therefore, direction was issued to dispose of the trial within two months and comply the orders of the Hon'ble Apex Court. It is submitted that after the said direction also there is no such progress in the trial, and therefore, the applicants be released on bail.

6. Learned APP strongly opposed the application on the ground that 9 witnesses are already examined.

Thus, there is a progress in the trial. Now, this Court has also directed the trial Court to record the evidence on day to day basis, therefore, the ground raised by the applicants is not sufficient to release the present applicants on bail.

7. Learned Counsel for the complainant also invited my attention towards the observation of the Sessions Court which shows that the adjournment applications are filed by the defence Counsel, and therefore, further witnesses are not examined.

8. Considering the controversial statements made by both the sides, the report of the District Judge was called. The report of the District Judge shows that in view of the order of this Court mentioned in para No.1 the evidence of Special Case No.32/2020 proceeded further with examination of PW-8 on 06/02/2025. Thereafter on 17/03/2025 PW-9 Rajesh is examined. Now, the matter is posted on 28/03/2025 for further evidence. It is further submitted by him that subsequent to the directions of this Court, the testimony of victim PW-4 is already completed. Evidence of further five witnesses are also recorded. Sincere efforts have been made to effectively proceed with the matter. Orders have been passed below Exh.1 time and again to facilitate effective progress. They are uploaded for information of parties. He further assigned the reasons that because of the sensitive nature of case, bulky evidence, large number of witnesses and number of accused involved in the matter it could not be disposed off within a period of three months.

9. On perusal of the entire evidence and entire communication on record it reveals that in view of the direction of the Hon'ble Apex Court the matter requires to be disposed of at the earliest. Now, 9 witnesses are already examined. This Court has already directed the trial Court to dispose of the matter by keeping it on day to day basis.

10. I have also perused the order passed by the Additional Sessions Judge, Yavatmal dated 06/02/2025 which is a speaking order which states that the matter was came up for hearing on 06/02/2025. The defence has moved an adjournment application vide Exhibit 59. Praying for matter to be adjourned and also seeking time to file detailed say over application Exhibit 57. This was objected by prosecution through say given on the adjournment application itself. He further observed that Special APP, victim Counsel, defence Counsel were heard elaborately and defence Counsel expressed inability to proceed with the matter in view of proceeding pending before Hon'ble Apex Court, and therefore, the time was granted. The other communication which is placed on record by the defence Counsel also shows that the Special Prosecutor has sought a date assigning the reason that he ought to have remain present before the Sessions Court; however, due to skyrocketing fair prize of air ticket from Mumbai to Nagpur, Pune to Nagpur and back it will be quite costly for undersigned. He also assigned the other reasons that he is busy in another matter before the Commission, and therefore, sought an adjournment. Thus,

it reveals that defence and prosecution both are seeking the adjournment time and again though various directions are given by the Hon'ble Apex Court as well as this Court to dispose of the trial. Considering the conduct of the parties which is not at all expected from them when there is a specific direction that they shall cooperate with the Court to dispose of the trial. The reason assigned by the Special Prosecutor as to the prices as to the air tickets is also not acceptable.

11. Considering the nature of the offence which is grievous one, the Hon'ble Apex Court has directed to dispose of the trial and this court time and again directed the Sessions Court to dispose of the trial and now also directed to fix the matter on day to day basis and record the evidence. Then also the application for adjournment is filed by the defence Counsel. The Hon'ble Apex Court in the case of **'X' Vs. State of Rajasthan & Anr. [Special Leave Petition (Criminal) No. 13378 of 2024] dated 27/11/2024** wherein it is observed that Ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused. It is further held that it is only event of the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.

12. In the present case, the victim who is 13 years girl was subjected for the sexual assault by the accused persons which is a Gang rape. The trial is already commenced, 9 witnesses are already examined. This Court has also directed the Sessions Court to expedite the trial and examine the witnesses on day to day basis and comply the order of the Hon'ble Apex Court as to the disposal of the trial. The prosecution and the defence Counsel shall cooperate with the Court to dispose of the trial at the earliest.

13. In view of the observation made by the Hon'ble Apex Court and considering the trial is already progressed the application deserves to be rejected.

14. Hence, the application is rejected.

15. The trial Court shall proceed with the trial on day to day basis and the prosecution and the defence Counsel shall not seek adjournment.

(URMILA JOSHI-PHALKE, J.)