



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

CRIMINAL APPEAL NO.14 OF 2025

Rohit s/o Chandu Shirsat
Aged about 19 years,
Occupation – Student,
R/o. Panchshil Nagar,
Kharap Road, Akola

...APPELLANT

VERSUS

1. State of Maharashtra,
through PSO Civil Lines,
Akola
2. XYZ
In Crime No.486/2022
dated 17/12/2022
Registered at Police Station,
Civil Lines, Akola

...RESPONDENTS

Mr. Z.Z. Haq, Advocate for the appellant.
Ms Swati Kolhe, APP for the State.
Mr. V. Vishwarupe, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : MARCH 28, 2025.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel
for the parties.

2. By preferring this appeal, the appellant has challenged the order dated 24.10.2024 passed by the Special Judge i.e. Additional Sessions Judge, Akola in Spl. POCSO Case No.18/2023 by which the application of the present appellant for grant of bail is rejected.

3. Learned Counsel for the appellant submitted that on 16.12.2022 victim aged about 17 years lodged an oral report alleging that on 14.12.2022 at around 1.00 to 2.00 PM when she was proceeding towards the house of her friend, one friend namely Karan Gaikwad intercepted her and asked to show his intention to speak with her. On the pretext of communicating with her, he took her in the forest at Pawan Nagari and subjected her for the sexual assault and also threatened her for dire consequences. She further alleged that on 16.12.2022 she has narrated the incident to her friend i.e. victim (No.2). Thereafter, they both went to the house of their friend for celebrating her birthday at that time, the accused Rishikesh Batule came there on the motorcycle accompanied by one of his friend and they took the victim, informant and other girls to their home and forcibly subjected them for the forceful sexual assault by administering the stupefying substance in the chocolate. On the basis of the said report, police have registered the crime against the present appellant and other co-accused.

4. Learned Counsel for the appellant submitted that the appeal is filed mainly on the ground that there is delay in trial. He invited my attention towards the earlier order passed by this Court in Criminal Appeal No.133/2024 dated 02/04/2024 wherein the liberty was granted to the present appellant to approach to the Court after six months, if there is no progress in the trial. He submitted that though charges are framed on 02/09/2023, within one and half years not a single witness is examined. The right of the present appellant as to the speedy trial enshrined under Article 21 of the Constitution of India is affected and the appellant cannot be kept behind bar for an indefinite period. In view of that, he be released on bail.

5. Learned APP and learned Counsel for respondent No.2 strongly opposed the appeal on the ground that merely because there is a delay in trial, the applicant cannot be released on bail. Now, the charges are already framed. Thus, the trial is already commenced. Due to the absence of the Counsel of the accused also the trial was not commenced, therefore, it is not only the prosecution which is responsible for the delay in trial but due to the defence Counsel also there was a delay in trial. In view of that, the application deserves to be rejected.

6. I have heard learned Counsel for both the sides. Perused the investigation papers. As far as the involvement of the present appellant

in the alleged crime is concerned which reveals from the statements of the witnesses especially statements of the victim girls. There is no dispute as to the fact that the applicant is arrested on 17/12/2022 and charges are framed on 02/09/2023 and till today not a single witness is examined. Learned Counsel for the appellant placed on record the entire roznama which shows that the matter is adjourned time and again merely because accused is not produced from the jail. No efforts are taken either by the prosecution or by the Court to secure the presence of the accused and to proceed with the trial. Thus, as far as the right of the present applicant as to the speedy trial enshrined under Article 21 of the Constitution of India admittedly is affected. The Hon'ble Apex Court in the case of ***Javed Gulam Nabi Sheikh Vs. State of Maharashtra and another [2024 SCC OnLine SC 1693]*** wherein it is held as under:

“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.”

7. In view of the observation of the Hon'ble Apex Court and considering the facts and circumstances of the present case, admittedly, the right of the present appellant as to the speedy trial enshrined under

Article 21 of the Constitution of India is affected. The appellant cannot be kept behind bar for an indefinite period. In view of that, the appeal deserves to be allowed. Accordingly, I proceed to pass the following order:

- (i) The appeal is allowed.
- (ii) The order dated 24.10.2024 passed by the Special Judge i.e. Additional Sessions Judge, Akola in Spl. POCSO Case No.18/2023 is hereby quashed and set aside.
- (iii) The appellant – Rohit s/o Chandu Shirsat in connection with Crime No.486/2022 registered at police station Civil Lines, Akola, District Akola for the offence punishable under Sections 376, 376(2)(n)(3)(DA), 363, 354, 354-A, 504 and 506(A) of the Indian Penal Code and Sections 3, 4, 8(l), 6, 9(g), 10, 17, 18 of the Protection of Children from Sexual Offences Act, 2012 read with Section 3(1)(w)(i)(ii), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, be released on bail on executing a P.R.Bond in the sum of Rs.25,000/- each with one solvent surety each, in the like amount.

(iv) The appellant shall attend the concerned police station twice in a month i.e. 1st and 15th day of every month between 10.00 a.m. and 1.00 p.m., till culmination of the trial and shall cooperate with the investigating agency.

(v) The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case either personally or by way of electronic media.

(vi) The appellant shall not leave the jurisdiction of Akola district without prior permission of the District Court, Akola.

(vii) The appellant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.

8. The contravention of any of the condition would lead to the cancellation of bail.

9. The appeal stands disposed of.

(URMILA JOSHI-PHALKE, J.)