



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 96 OF 2025

Junaid Abdul Khalid Kadar

Vs.

State of Maharashtra, through Police Station Officer, Police Station
Gittikhadan, District Nagpur and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M. N. Ali, Counsel for the applicant.

Mr. C. A. Lokhande, APP for non-applicant No.1/State.

Mr. Aadit Ved, Counsel for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 17/04/2025

1. The applicant came to be arrested on 21.06.2023 in connection with Crime No.397/2023 registered with Police Station, Gittikhadan, District Nagpur for the offence punishable under Sections 398, 377, 504 read with Section 34 of the Indian Penal Code and under Section 135 of the Maharashtra Police Act.

2. On 13.06.2023 one Jatin Kapgate has lodged report to the effect that he came in contact with the applicant through one mobile APP. On 13.05.2023, the applicant called the informant at his house at about 3.30 p.m. and by taking his home to the informant has forcibly established the sexual intercourse with him an unnatural manner. At the relevant time one unknown person has threatened the informant by knife and was asking for Rs.

10,000/-. The applicant and his associates have snatched the mobile phone of the informant and tried to transfer the money via UPI transaction. However, since the bank account of the informant was seized, the transaction was not successful. The applicant and the another co-accused thereafter beaten the informant by fist blows. On the basis of the said report, police have registered the crime against the present applicant.

3. Heard learned Counsel for the applicant, who submitted that the application is filed on the ground that there is a delay in trial, and therefore, the right of the present applicant as to the speedy trial is violated. He further invited my attention towards the various statements of the witnesses and submitted that the baseless and false allegations are levelled against the present applicant, which is not substantiated by any other material. He further submitted that now the investigation is already completed and charge-sheet is filed, the trial is not yet commenced and the applicant cannot be kept behind bar for the indefinite period. In view of that, he be released on bail.

4. Learned APP and learned Counsel for the non-applicant No.2 strongly opposed for the same and submitted that applicant is having criminal antecedents, in all 17 offences are registered against him till today. The allegation against the present applicant shows that the informant was subjected for

the forceful sexual assault by the present applicant in an unnatural manner, if he is released on bail, there is every possibility of his involvement in similar type of the offences. In view of that, the application deserves to be rejected.

5. On hearing both sides and on perusal of the investigation papers, the involvement of the present applicant revealed from the investigation papers. The statement of the informant as well as the supplementary statement discloses the act of the present applicant in the alleged incident. Admittedly, the medical examination report is not supporting, but considering the statement of the victim, at this stage, there is no reason came forward regarding false implication of the present applicant. The another ground raised by the present applicant is that there is delay in trial. The applicant is arrested on 21.06.2023 thereafter the charge-sheet is filed on 22.08.2023. The entire roznama is placed on record which shows that on several occasions as the accused No.2 was absent, and therefore, the charge could not be framed. It further reveals from the roznama that the case was fixed for hearing before framing of charge at that time also the Counsel of the applicant remained absent, and therefore, the charge could not be framed. The report of the District Judge - 2 and Additional Sessions Judge, Nagpur also shows that due to the absence of the co-accused, the charge was not framed. Thereafter, the case was fixed for framing of the charge and hearing before the framing

of the charge, at the relevant time, the accused No.1 i.e. the applicant, who was represented by his Counsel remained absent and therefore, the hearing on the point of framing of charge was not conducted.

6. Learned Counsel for the applicant vehemently submitted that as there is a delay in trial and therefore, the right of the present applicant enshrined under Article 21 of the Constitution is violated. He placed reliance on the decision of **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh in Criminal Appeal No.2790/2024 decided on 18 July, 2024** wherein the Hon'ble Apex Court by referring its earlier judgment observed "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. This aspect is further considered by the Hon'ble Apex Court in the case of **X Vs. State of Rajasthan & Anr. in Special Leave Petition (Criminal) No. 13378 of 2024** wherein the Hon'ble Apex Court 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 observed by the Hon'ble Apex Court it is only in the event if 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."

8. In the light of the above observations, if the facts of the present case and the roznama is observed it reveals that it is the accused due to whom the trial is held up and the charge could not be framed, therefore, the applicant cannot take the benefit of his own ground as the other co-accused was absent at the time of framing of the charge and the Counsel of the present applicant was also absent and therefore, the charge was not framed.

9. In view of the above discussion and considering the *prima facie* case made out against the present applicant, his bail application deserves to be rejected. Accordingly, I proceed to pass following order:

ORDER

The application is rejected.

(URMILA JOSHI-PHALKE, J.)