



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

CRIMINAL APPLICATION (BA) NO. 365 OF 2025

ZAMANLAL BHISHAMSINGH GAWARNA

...**VERSUS**...

THE STATE OF MAHARASHTRA, THR PSO, P.S. DHANORA, DIST. GADCHIROLI

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

Court's or Judge's order

Shri M.A.Deo, Advocate for applicant.
Ms. H.N.Prabhu, APP for respondent no. 1/State.
Shri S.H.Bhatia, Advocate for respondent no. 2.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 02nd MAY, 2025

The applicant came to be arrested on 01/06/2021 in connection with Crime no. 39/2021 registered with Police Station Dhanora, District Gadchiroli for the offences punishable under Sections 323, 363, 376(D), 376(DA) of the Indian Penal Code and Sections 6, 8, 10 and 12 of the Protection of Children from Sexual Offences Act.

2. The crime is registered on the basis of a report lodged by the victim on an allegation that on 28/05/2021, there was some pre-marriage function in the village at the house of one Fulchand Tappo and the victim had been there around 7.00 p.m. along with her sister and friends. Around 8.30 p.m., when she was talking outside with her maternal cousin, at the relevant time, four accused persons came towards her and one co-accused had asked her as to where she was going. The victim did not give any reply, and the said accused gagged her mouth

by one hand and caught her hand by his other hand and the other three accused lift the victim by holding her hands and legs and thereafter, she was subjected for forceful sexual assault by all the accused persons. On the basis of the her report, the police have registered the crime against the present applicant and other co-accused.

3. The learned counsel for the applicant submitted that, as far as the involvement of the applicant is concerned, it is entirely based on the identification parade, which was conducted after 18 days of the said incident and prior to that, the photographs of the suspected persons were shown to the victim. Thus, she has identified the present applicant on the basis of the said photographs. Thus, he submitted that, even considering the merit of the case, the entire case is involved around the T.I. parade and the said T.I. parade is a weak type of evidence. The another ground raised by him is that, there is inordinate delay in conducting the trial. He submitted that, since 01/06/2021, the applicant is behind the bar and there is no progress in the trial. In fact, the charges have framed recently but no single witness is examined.

4. In support of his contention, he placed reliance on the decisions of the Hon'ble Apex Court in the case of *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari V/s. State of Uttar Pradesh [(2024) 9 SCC 293]* and *Javed Gulam Nabi Sheikh V/s. State of Maharashtra and anr. [2024 SCC OnLine SC 1693]*

5. The learned APP and learned counsel for the victim strongly opposed the application and submitted that,

considering the nature of the offence, which is serious one, as a minor victim girl was subjected for sexual assault by four persons. During the investigation, her statement is recorded. She was referred for medical examination, which substantiates the allegation. In view of that, the application deserves to be rejected.

6. I have heard both the sides and perused the investigation papers. As far as the allegations against the present applicant is concerned, which is substantiated by the investigation papers. At this stage, it would not be appropriate to comment on the nature of the evidential value of the T.I. parade which is allegedly suffering from any infirmity. The main ground which is raised by the applicant is that, there is delay in the trial.

7. The observations of the Hon'ble Apex Court in the case of *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari* (supra) and *Javed Gulam Nabi Sheikh* (supra), wherein the Hon'ble Apex Court has held that, "*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.*"

8. Here in the present case also, the applicant is behind the bar since 01/06/2021 and the trial is not commenced. Thus, there is no dispute as to the fact that the right of the present

applicant of a speedy trial in view of Article 21 of the Constitution is affected. In view of that, the applicant has made out a case for grant of bail. Hence, the application deserves to be allowed. Accordingly, I proceed to pass the following order:-

ORDER

- a] The criminal application is **allowed**.
- b] The applicant - Zamanlal Bhishamsingh Gawarna shall be released on bail, in connection with Crime No. 39/2021 registered with Police Station Dhanora, District Gadchiroli for the offences punishable under Sections 323, 363, 376(D), 376(DA) of the Indian Penal Code, 1860 and Sections 6, 8, 10, 12 of the Protection of Children from Sexual Offences Act, on executing a PR. Bond of Rs. 50,000/- with one solvent surety in the like amount.
- c] The applicant shall not enter into the vicinity of village Sindesur, Tah. Dhanora, Distt. Gadchiroli till culmination of the trial.
- d] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case, either physically or through electronic media.
- e] The applicant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.
- f] On contravention of any of the conditions imposed by this Court, the bail granted to the present applicant deserves to be cancelled.

g] The fees of the appointed counsel be quantified as per Rule.

The Criminal application is **disposed of**.

(URMILA JOSHI-PHALKE, J.)

B.T.Khapekar