



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

CRIMINAL APPLICATION [BA] NO. 290 OF 2026.

Fakirchand Bhikam Sheikh.

-VERSUS-

State of Maharashtra and another.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri L.B. Thawkar, Advocate for the Applicant.

Shri V.A. Thakare, A.P.P. for Non-applicant No.1/State.

Ms P. Mankar, Advocate (Appointed) for Non-applicant No.2.

CORAM : M.M. NERLIKAR, J.

DATE : MARCH 25, 2026.

Heard.

2. The applicant came to be arrested in connection with Crime No.168/2024 registered with Saoner Police Station, Nagpur Rural, for the offence punishable under Sections 376, 506 of the Indian Penal Code and Section 67[a] of the Information Technology Act.

3. As per the contents of the first information report, the victim is a labour and is residing alone. She is acquainted with the applicant. Around 18.01.2024, the applicant came to

the house of the victim, when she was alone and sexually assaulted her and made obscene video. Under the threat of making the said video viral, he left the spot of incident. He however, forwarded the said video to one person namely Rajesh Gadhwal, and accordingly the report came to be lodged.

3. The ground which is raised by the applicant for grant of bail is delay in trial. The learned Counsel for the applicant submits that Article 21 of the Constitution of India has been grossly violated, as there is no speedy trial, so far as the present case is concerned. The applicant has filed an application before the trial Court on the said ground, and the trial Court has observed that accused is in jail from the date of his arrest i.e. 15.02.2024, however, charges could not be framed, as he was not produced before the court by the jail authorities. However, it was further observed that this cannot be a ground for releasing the applicant on bail, being no change in ground or circumstance. It is submitted that prima facie the observations are perverse in view of catena of judgment of Hon'ble Supreme Court and of this Court. The

trial Court has simply observed that the judgments which are cited are having different set of facts as compared to the present case. The learned Counsel therefore, submits that the trial court ought to have considered the prayer for bail from the applicant is in jail since 15.02.2024. He therefore, prayed for grant of bail.

4. On the other hand, the learned A.P.P. for the non-applicant no.1 and the learned Counsel appointed for the non-applicant no.2, vehemently opposed the application by submitting that the applicant has withdrawn his application for grant of bail twice. Recently on 03.02.2026, the applicant has withdrawn his application and accordingly the application came to be disposed of as withdrawn. They further submit that considering the seriousness of the crime, the applicant does not deserve to be released on bail.

5. I have considered the rival submissions of the parties. Admittedly, it appears from the record that the applicant is behind bars since 15.02.2024 and till date even charges are not framed. It further appears that since the date of arrest on maximum occasions, the applicant was not produced

before the Court by the jail Authorities.

6. The Hon'ble Supreme Court in the case of **Javed Gulam Nabi Shaikh .vrs. State of Maharashtra and Another, (2024) 9 SCC 813**; has in paragraph No.17 held as under:

“17. 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.”

Further in case of **Sheikh Javed Iqbal .vrs. State of Uttar Pradesh, (2024) 8 SCC 293**; it has been held in paragraph No.42, by the Supreme Court as under :

“42. 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.”

Even in the judgment in case of **Anoop Singh .vrs. U.T. of J & K (SLP (Cri) No.1398/2026)** vide order dated 03.02.2026, the Supreme Court has in paragraph No.8 held as under :

“8. The report is extremely disturbing. The report highlights the sorry state of affairs at the end of the prosecuting agency. We are at pains to note that in last 7 years, the prosecution has been able to examine only 7 witnesses. Prosecution still intends to examine 17 more witnesses. We wonder who are these 17 witnesses who are yet to be examined and if not examined, what would be the adverse effect on the case of the prosecution. However, the most unfortunate part of the report of the Trial Court is that past 82 hearings, not a single witness has been examined.”

7. The Hon’ble Supreme Court has in a recent judgment in case of **Arvind Dham .vrs. Directorate of Enforcement – (2026 SCC Online SC 30)**, has in paragraph no.18 held as under :

“18. The right to speedy trial, enshrined under Article 21 of the Constitution, is not eclipsed by the nature of the offence. Prolonged incarceration of an undertrial, without commencement or reasonable progress of trial, cannot be countenanced, as it has the effect of converting pretrial detention in form of punishment. Economic offences, by their very nature,

may differ in degree and fact, and therefore cannot be treated as homogeneous class warranting a blanket denial of bail.”

8. The Supreme Court, has categorically held that if there is delay in trial it would amount to violation of Article 21 of the Constitution of India. Admittedly, in the present case, the applicant is behind bars since 15.02.2024 and there is absolutely no progress in the trial. In such circumstances, the applicant cannot be kept behind bars for indefinite period. Thus, considering the ratio laid down by the Hon'ble Supreme Court in catena of cases, and more particularly in the cases referred above, I am inclined to grant bail to the applicant. Hence, the following order.

ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The applicant /accused Fakirchand Bhikam Sheikh be released on regular bail in connection with Crime No.168/2024 registered with Saoner Police Station, Nagpur Rural, for the offence punishable under Sections 376, 506 of the Indian Penal Code and Section 67[a] of the Information Technology Act on his furnishing P.R. Bond of Rs.50,000/-, with two sureties in the like amount.

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- (iii) The accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- (iv) The accused shall provide his residential address and cell number to Police Station concerned and shall not change the place of residence without prior intimation to the Investigating Agency.
- (v) The accused shall attend each and every date of trial regularly. If he fails to attend the trial on one date, or fails to comply with the aforesaid conditions, his default would entail the State to ask for cancellation of bail.
- (vi) The above observations are prima facie in nature, and restricted for the purpose of deciding this application. The Trial Court shall not get itself influenced by said observations, during the course of trial.
- (vii) Misc. Applications, if any, are also disposed of.
- (viii) Fees of the appointed Counsel be determined and paid as per Rules.

JUDGE.