



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

CRIMINAL APPLICATION [BA] NO. 329 OF 2026.

Arjun Uttamrao Rathod

-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

Ms F.N. Haidari, Advocate for the Applicant.
Ms S. Haider, A.P.P. for Non-applicant No.1/State.

CORAM : M.M. NERLIKAR, J.

DATE : APRIL 07, 2026.

This Court has appointed Ms M. Gulati, Advocate to represent the victim/non-applicant no.2 since nobody was appearing for the victim. Now Advocate S.K.Wankhede, appears for non-applicant no.2, and therefore, Ms M. Gulati, Advocate is discharged and the matter is heard accordingly.

2. The applicant came to be arrested in connection with Crime No.573/2022 registered with Daryapur Police Station, District Amravati for the offence punishable under Section 376[2][I] of the Indian Penal Code.

3. The first information came to be registered by the

sister-in-law of the victim, alleging that the applicant/ accused is their relative and used to frequently visit their house. On 30.08.2022 the victim went to the house of the applicant along with her parents. While returning, the applicant took the victim on his bicycle and on the way the applicant by taking advantage of the fact that the victim is a woman with an intellectual disability, subjected her to rape. On reaching home, on asking, the victim narrated the entire incident to the informant, and hence the report.

4. The only ground raised by the learned Counsel for the applicant for grant of bail is 'delay in trial'. It is submitted that the first information report was registered on 31.08.2022; the applicant came to be arrested on 01.09.2022; charge sheet came to be filed on 21.10.2022 and charge is framed on 12.02.2025. It is submitted that there is no progress in the matter, though the applicant came to be arrested on 01.09.2022. The learned Counsel submits that this Court had by order dated 15.07.2024 passed in Criminal Application (BA) No.93/2024 granted liberty to the applicant to file bail application, if there is no progress in the trial, and therefore,

she submits that though time of more than one year has elapsed since passing of the aforesaid order, there is absolutely no progress in the trial. She submits that considering the fact that the applicant is behind bars since 01.09.2022, he deserves to be released on bail on the ground of delay in trial, as speedy trial is a fundamental right of the accused/applicant guaranteed under Article 21 of the Constitution of India.

5. On the other hand, the learned A.P.P. and learned Counsel appearing for the non-applicant, vehemently opposes the application by submitting that now charges are framed, summons are issued to the witnesses and soon the trial will commence. They submit that at the most the trial Court be directed to conclude the trial within a period of 6 months. It is also submitted that on the earlier occasion, as this Court had shown its disinclination to grant bail, the applicant had withdrawn his bail application. The offence is of serious nature, as the applicant has raped a woman with an intellectual disability, and therefore, according to them this is not a fit case for grant of bail.

6. I have considered the rival contentions of the parties. The Supreme Court in catena of cases has held that whatever offence has been committed by the accused is immaterial when fundamental right guaranteed under Article 21 of the Constitution of India is infringed.

7. 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.”

8. The Hon'ble Supreme Court 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.”

9. Admittedly, in the present case, the first information report was registered on 31.08.2022, the applicant is arrested on 01.09.2022 and since then he is in jail i.e. for more than 3.5 years. It further appears that charges are framed on 12.02.2025. This Court had called for the status report from the trial Court and accordingly the said report is received, which shows that summons are issued to the prosecution witnesses and case is fixed for adducing their evidence. Meaning thereby, it is only at the stage of evidence and there is no progress in the trial after framing of charges. The accused cannot be kept behind bars for indefinite period. One does not know when the trial would conclude. In such circumstances, I am inclined to grant bail. Hence, the following order.

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ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The applicant /accused Arjun Uttamrao Rathod be released on regular bail in connection with Crime No.573/2022 registered with Daryapur Police Station, District Amravati for the offence punishable under Section 376[2][I] of the Indian Penal Code on his furnishing P.R. Bond of Rs.50,000/- with two sureties in the like amount.
- (iii) The accused shall not enter within the territorial jurisdiction where the informant is residing, till the completion of the trial.
- (iv) 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.
- (v) The accused shall provide his residential address and cell number to Police Station concerned and shall not change his place of residence without prior intimation to the Investigating Agency.
- (vi) The accused shall attend each and every date of trial regularly. If he fails to attend the trial for one single date, or fails to comply with the aforesaid conditions, his default would entail the State to ask for cancellation of bail.

- (vii) 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.
- (viii) Misc. Applications, if any, are also disposed of.

JUDGE