



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

Criminal Application (BA) No. 429 of 2024

Dattatray Shrikrushna Shejole

Versus

The State of Maharashtra through Police Station Officer, Khamgaon Rural
Police Station District Buldhana

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.D.Bhate, Advocate for the applicant.

Shri S.S.Dhote, APP for the non-applicant/State.

Shri C.A.Joshi, Advocate for the non-applicant no.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 6th AUGUST, 2024.

The applicant came to be arrested on 15th December, 2021 in connection with Crime No. 437 of 2021 registered at Khamgaon Rural Police Station, District Buldhana for the offence punishable under Sections 366, 376, 376(AB), 504, 506 of Indian Penal Code and Sections 4, 6, 7 and 8 of the Protection of Children from Sexual Offences Act.

2. As per the allegation made by the mother of the victim girl that victim is 7 years old and on 10th

December, 2021 at about 6 pm when she returned home and after victim disclosed to her that she was subjected for sexual assault by the present applicant. On the basis of the same, the police have registered the crime.

3. Learned counsel for the applicant submitted that as far as the statement of the victim is concerned, which is not substantiated by the Medical Certificate. Investigation is already completed, the applicant is behind the bar since 15th December, 2021 and despite the directions given by this Court, the trial was not progressed. He points out that by order dated 14th June, 2023, this Court has granted the liberty to the present applicant to file an application if the trial is not commenced within six months. Now, one year has already been passed and there is no progress in the trial. The applicant cannot be detained for the indefinite period. In view of that, he be released on bail. In support of his contention, he placed reliance on Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh in Criminal Appeal no. 2790 of 2024 decided on 18th July, 2024 and Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another in Criminal Appeal No. 2787 of 2024 decided on 3rd July, 2024.

4. On the other hand, learned Additional Public Prosecutor strongly opposed the application and submitted that seven years girl was subjected for sexual assault by the present applicant. The contention of the victim is substantiated by the medical evidence as hymen was torn and the two fingers test was found positive. In view of that the application deserves to be rejected.

5. Learned counsel for the victim strongly opposed the application on the ground that small girl of 7 years old was subjected for sexual assault. The informant has already moved to the Sessions Court for speedy disposal. In view of that the application deserves to be rejected.

6. After hearing learned counsel for the applicant, learned Additional Public Prosecutor for the non-applicant/State as well as learned counsel for the victim, perused the investigation papers from which it reveals that the allegation against the present applicant is that he has subjected to the victim girl for sexual assault who is seven years of age. As far as the statement of the victim is concerned, which is substantiated by the medical evidence also as during the investigation it reveals that hymen was torn, healed rounded edges, and admit two fingers. Thus, not only the oral evidence but

also the medical evidence substantiates the allegations levelled against the present applicant. The present application is filed by the present applicant on the ground of delay in trial. Learned counsel for the applicant pointed out that initially the bail application No. 1257 of 2022 was filed by the present applicant which was withdrawn with liberty to file afresh, if the trial is not commence within six months. Now, already one year has been passed and there is no progress in the trial. Certified copy of the roznama placed on record shows that on several occasions the accused was not produced before the Court by the jail authority and therefore the charge was not framed. From the roznama, it appears that Special Court has not taken the efforts to secure the presence of the accused before the Court to proceed with the trial. The Hon'ble Apex Court in the case of Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another (supra), 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. In *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh* (supra), wherein also the issue regarding the speedy trial was considered by the Court and it is held by the Apex Court that this Court thereafter proceeded to hold that Section 43D(5) of the UAP Act does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Long incarceration with the unlikelihood of the trial being completed in the near future is a good ground to grant bail.

7. Here in the present case also the applicant is behind the bar since 15th December, 2021. From the certified copy of the rojnama it reveals the trial was commenced merely because the accused was not produced before the Court and the charge was not framed. The Special Court has not taken any efforts to secure the presence of the accused before the Court as well as the prosecution has not taken any efforts to secure the presence of the accused before the Court. Thus, in view of the observations made by the Hon'ble Supreme Court, 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. Admittedly, the crime committed is serious but in view of the observations of the Hon'ble Supreme Court and in view of the Article 21 of the Constitution, the applicant cannot be kept behind the bar for indefinite period. In that view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order.

- i. The criminal application is allowed.
- ii. The applicant - Dattatray Shrikrushna Shejole shall be released on bail in connection with Crime No. 437 of 2021 registered at Khamgaon Rural Police Station, District Buldhana for the offence punishable under Sections 366, 376, 376(AB), 504, 506 of Indian Penal Code and Sections 4, 6, 7 and 8 of the Protection of Children from Sexual Offences Act on executing a PR Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.
- iii. The applicant shall not enter into the vicinity of Pimpala, Taluka Khamgaon, District Buldhana till the culmination of the trial.

iv. The applicant shall not induce, threat or promise to any witnesses who are acquainted with the facts of the present case.

v. The applicant shall attend the proceedings before the Special Court without seeking any exemption unless there are any exceptional circumstances.

vi. On contravention any of the condition imposed by this Court, the bail granted to the present applicant deserves to be cancelled.

[URMILA JOSHI-PHALKE, J.]