



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

BAIL APPLICATION NO.1899 OF 2023

Aslam Kalim Shaikh,
Age-24 years, Occu:Private Service,
R/o-Ranjani, Tq-Kallam,
Dist-Osmanabad.

...APPLICANT

VERSUS

1) The State of Maharashtra,
Through Police Inspector,
Police Station, MIDC, Latur,

2) X Y Z

...RESPONDENTS

...
Mr. Shrikant G. Kawade Advocate for Applicant.
Ms. P.R. Bharaswadkar, A.P.P. for Respondent No.1 – State.
Ms. Sarita Gaikwad Advocate appointed for Respondent No.2.

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CORAM: S.G. MEHARE, J.

DATE : 30th JULY 2024

ORDER :

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel appointed for the victim.
2. The applicant seeks bail in Crime No. 534 of 2020 registered with MIDC Police Station, Latur for the offence

punishable under Sections 366, 376, 376 (2)(j), 506 of the Indian Penal Code and under Sections 3, 4, 5 (j)(2), 6 of the Protection of Children from Sexual Offences Act.

3. The applicant has been arrested on 23rd December 2020 and since then he is languishing in jail. Learned counsel for the applicant submits that the charge was framed on 1st February 2022 and since then there is no progress in the trial. On the instructions of the counsel representing the applicant before the trial Court, he submits that though the learned Public Prosecutor submitted the list of the witnesses at the time of framing of charge, till date no witnesses were called for evidence. Most of the time the applicant was not produced from the jail. Hence the matter was adjourned. Since there was no diligence on the part of the prosecution, the applicant is unnecessarily languishing in jail. He is incarcerated for about more than three and half years for no reason. Merely filing an application for any other relief does not change the material stage of the trial. The applicant has no antecedents to his discredit. He is young boy of 24 years of age. He may be granted bail. Learned counsel has produced the copies of the order-sheets / roznama of the trial pending before the Extra Joint District Judge and Additional Sessions Judge, Latur.

4. Learned APP would submit that on many occasions the matter was adjourned at the request of the applicant. His lawyer was also absent. The offence is serious. The matter may be disposed of within a short time. Therefore, instead of granting bail, the matter may be expedited. Learned counsel for the victim also opposed the application contending that the offence is serious. There is harm to the life of the victim at the hands of the applicant.

5. Perused the papers. The copies of the order-sheets placed on record reveals that most of the time the accused was not produced in the Court from the jail. It is the failure of the State to assist the Court in expediting the trial. The approach of the Court is also not happy. The material stages of the trial are casually changed only on filing another applications. It is really unfortunate that the prosecution is not diligent in calling the witnesses for evidence after framing the charge on 1st February 2022.

6. Recently, the Hon'ble Supreme Court, recently, in the case of *Javed Gulam Nabi Shaikh vs. State of Maharashtra and others*, MANU/SC/0609/2024, had expressed that speedy trial is the fundamental right of the accused. It is the responsibility of

the State to ensure the speedy trial. However, it seems that none of the agency is diligent in protecting the fundamental right of the accused. The trials of such serious crimes are conducted very casually. In most of the cases State fails to produce the accused from jail and the Video Conferencing, the technology provided to all the concerned, also seems not used. It is expected that the trial should be concluded within a reasonable time. Article 21 of the Constitution applies irrespective of the nature of the crime. Here the prosecutor before the trial Court failed to ensure speedy trial. His conduct shows that he is not serious about the trial. The applicant is incarcerated for more than three and half years in the crime. Still there is no effective progress in the trial. Hence the applicant deserves bail. Hence, the following order:-

ORDER

- i) Bail Application stands allowed.

- ii) The applicant – Aslam Kalim Shaikh be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount, in the above crime, on the condition that:-

(a) The applicant shall not tamper with the prosecution witnesses.

(b) The applicant shall attend the trial on each and every effective date.

(c) The applicant shall furnish his permanent residential proof and the cell phone number with the trial Court with an undertaking that he would not change his cell phone number till the trial is concluded.

(d) The applicant shall not contact the victim in any mode or manner till the trial is concluded.

(iii) The Secretary, High Court Legal Services Sub-Committee, Aurangabad do pay the fees of learned Advocate Ms. Sarita Gaikwad as per schedule, who was appointed to represent respondent No.2.

[S.G. MEHARE, J.]