

MHNS070022052019

Spl. (Atro) Case No.19 of 2019



The State of Maharashtra
Vs
Bhushan Punjaram Khairnar

ORDER BELOW Exh.84
(Passed on 30/09/2025)

1. This is successive application filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of bail to the accused who is charge-sheeted in connection with C. R. No.94 of 2019 registered at Vadner Khakurdi Police Station for the offence p/u/s 376(2)(n) of the Indian Penal Code (hereinafter for short 'the I.P.C.') and Section 3(1)(w), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter for short 'the Atrocities Act') and Section 4, 6 and 8 of the Protection of Children from Sexual Offenses Act, 2012 (hereinafter for short ' the POCSO Act')

2. Ld. APP for the State has opposed the application by filing written say of I.O. at Exh.86.

3. Informant/victim appeared and opposed the application by filing her written say at Exh.85.

4. Heard, Shri. N.P Marchant, Ld. advocate for the applicant-accused and Shri. S. K. Sonawane, Ld. APP for the State. Both argued vehemently.

5. Ld. Advocate for the accused submitted as under :-

The accused is in Jail since 08/09/2019. The case is fixed for judgment. Article 21 of the Constitution guarantees the personal liberty and it is settled law that bail is a rule and jail is an exception. If the trial is not concluded within specific period the accused can seek bail. In the present case already the evidence is adduced by the prosecution and final arguments are heard and case is fixed for judgment since long, therefore, considering the period of 6 years for which the accused is in

Jail, he is entitled to be released on bail. Cri. Appeal No. 108/2021 was filed on behalf of accused for grant of bail and the said appeal came to be decided by the Hon'ble High Court of Judicature at Bombay vide order dt.08/03/2020 by giving direction that the trial should be conducted expeditiously and case should be decided within 6 months, however, till today the judgment is not passed in the present case, therefore, accused be released on bail.

6. On the other hand, Ld. APP and informant/victim in person submitted as under-

The case is under the relevant provisions of I.P.C. and the POCSO Act and accused has committed serious offence. Already witnesses are examined by the prosecution and after hearing the arguments the case is fixed for final judgment, therefore, and as all earlier bail applications filed on behalf of accused are rejected by the concerned Courts, the accused should not be released on bail. If bail is granted to the accused there is every possibility that he would pressurize the informant/victim and witnesses and life of informant/victim may be endanger. Therefore, the application should be rejected.

7. Admittedly, charge-sheet is filed against accused for the offence p/u/s. 376(2)(n) of the I.P.C. and Section 3(1)(w), 3(2)(va) of the Atrocities Act and section 4, 6 and 8 of the POCSO Act. The prosecution has examined in all 5 witnesses and relied on various documents. After going through the deposition of witnesses it can be said that there is substantive evidence against accused showing his involvement in committing the above said offences. After hearing the final arguments the case is fixed for judgment. For one or other reasons the judgment could not be delivered by this Court. Considering the punishment prescribed for the said offences and the seriousness of the said offences and as there is presumption under the POCSO Act, merely because there is delay in delivering the judgment, the accused cannot claim bail as of right as his all earlier bail applications are rejected on

merits by the Hon'ble High Court of Judicature at Bombay and the Additional Sessions Judge, Malegaon/this Court. Therefore, the accused is not entitled for bail. As such, the application is to be rejected. Hence, I pass the following order.

ORDER

1. The application is rejected.
2. Inform accordingly, to the D.G.P./PP and Police Station Officer of concerned Police Station.

(Soft copy of this bail order be sent to the concerned Jail Authority through E-mail for providing its copy to the accused.)

Date- 30/09/2025.
Malegaon.

(K. R. Patil)
Addl. Sessions Judge, Malegaon.
Dist. Nashik.