

MHCC050026102021



IN THE COURT OF SESSIONS AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI

CRIMINAL BAIL APPLICATION EXH.18

IN

SPECIAL CASE NO.177 OF2021

(CNR NO.MHCC050026102021)

IN

(C. R. NO. 85 OF 2021 of Malvani Police Station)

Pappu Hiralal Gupta,

Aged about 28 years, Occ- Service

Residing at Bhamrekar Nagar, gully No. 7,

Amboj Wadi Malvani, Malad

Mumbai 400 095.

...Applicant

Versus

The State of Maharashtra

At the instance of Sr. Inspector of police,

Malvani Police Station

...Respondent.

Ld. Adv. Mr. Tauqeer Siddhiqui for applicant.

Ld. APP. Ms. Poornima Rathod for Respondent.

CORAM : H.H. ADDITIONAL SESSIONS JUDGE
SHRI D. G. DHOBLE (C. R. No.15)

DATE : 12th February, 2024.

ORDER

This is an fourth bail application under Section 439 of
Criminal Procedure Code for releasing the applicant on bail in

connection with in C.R. No.85/2021 registered with Malvani Police Station for the offence punishable under Sections 363, 363-A, 368, 376, 376(2) (n) of the Indian Penal Code, 1860 read with Sections 4, 5(l), 6 and 12 of the Protection of Children from Sexual Offences Act, 2012. (Hereinafter referred as “the IPC” and “the POCSO Act” for the sake of brevity).

Facts in brief of prosecution case is as under:-

2 It is case of prosecution that the complainant is the mother of victim. The victim is 16 years old. The allegations are that the applicant/ accused kidnapped the victim from the lawful guardianship of the complainant and committed penetrative sexual assault repeatedly on the victim. On the basis of above mentioned report, crime has been registered against the accused.

3. The factual matrix of the case to dispose of the present application is that the accused is prosecuted for the offences punishable under section 363, 366-A, 368, 376, 376 (2) (n) of the Indian Penal Code r/w section 4, 5(l), 6 and 12 of the Protection of Children from Sexual Offences Act, 2012. After completion of investigation, chargesheet is filed. Thereafter, applicant has filed first bail application which was rejected by an order dated 04/08/2021, second bail application was rejected by an order dated 03/01/2022 and thereafter, third bail application was rejected by an order dated 18/03/2023. The said applications rejected on merits. This is fourth bail application on the ground of change in circumstances.

4. The Ld. advocate for the applicant submits that applicant is in jail

since long. The charge is not yet framed. Therefore, applicant has fundamental right to release on bail as a personal liberty cannot be curtailed. He submitted that this is substantial change in fact and circumstances of the case, for which applicant is entitled for bail.

5. The Ld. APP for the State submit that today the accused was produced on V.C. and this court directed to produce in person for recording the charge on the next date. The applicant has moved various applications from time to time, due to which trial is delayed. She submitted that only the delay in trial, is not a reason to release the applicant on bail. The offence is very serious. Already the bail plea of the accused/applicant has been already considered by this Court on merit on third occasion. Hence, application is not maintainable .

6 Heard, perused the grounds in application, reply filed by the State and earlier rejected orders and also report and documents filed under Sections 173 of Cr.P.C. It appears that this court has already considered on merits of the case and rejected the applications on thrice occasion. In this bail application only change in circumstances is shown that there is delay of trial. This court is of view that the offences is very serious. The applicant has from time to time filed bail applications as well as various applications due to which the trial is delayed. This court has issued production warrant for framing the charge. The jail authority is directed to keep the applicant present on the next date.

7. The Ld APP has rightly submits that in such a heinous offence, delayed trial is not a ground to allow the application. I found no substantial change in the facts and circumstances. The minimum

punishment provided under alleged act is 20 years which may extend to the imprisonment of life. In such severity of the punishment, If applicant is granted bail, there is possibility to tamper the prosecution witnesses. In view of above discussions, the applicant being devoid of merits, same needs to be rejected. Hence, I passed the following order.

ORDER

- 1 Criminal Bail Application at Exh.18 is stands rejected.
- 2 Criminal Bail Application at Exh.18 stands disposed of accordingly.

Date : 12/02/2024

(D. G. DHOBLE)
Additional Sessions Judge,
City Civil & Sessions Court,
Borivali Div.,Dindoshi, Mumbai.

Date of dictation : 12/02/2024
Typed on computer : 12/02/2024
Checked & Signed by HHJ on : 12/02/2024

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER”

Date : 14/02/2024

Time : 2.30 p.m.

UPLOAD DATE AND TIME

Ms.S.S.Chudjir
(Stenographer Grade-I)
NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Datta G. Dhoble (C.R. No.15)
Date of Pronouncement of JUDGMENT/ORDER	12/02/2024
JUDGMENT/ORDER signed by P.O. on	12/02/2024
JUDGMENT/ORDER uploaded on	14/02/2024