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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 1461 OF 2022

Tribhuvan Kasthurilal Bhardwaj ..Applicant
vs.
State of Maharashtra and anr. ..Respondents

Mr. Sujit Sahoo a/w Mr. Rutuj Warick and Mr. Aditya Telpale,
for applicant.

Mr. S.V. Gavand, APP for respondent.

Mr. Pradeepkumar L. Pardeshi, for respondent no. 2.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 22, 2022

P.C. :

- 1.** Heard learned counsel for the applicant.
- 2.** This is an application for bail in respect of the FIR No. 270/2021 registered with Kalwa Police Station for the offence punishable under sections 377, 506(2) of the Indian Penal Code, 1860 and sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012.
- 3.** The victim is a boy of 10 years of age. He started attending tuition from 09/01/2021 at the house of tuition teacher -Anuj Bharadwaj for two hours from 4.00 p.m. to

6.00 p.m. Anuj is the son of the applicant. It is alleged that from the end of January 2021, the victim refused to attend tuition. The complainant tried to enquire from the victim the reason, but he did not respond. Thereafter it is alleged that on 09/08/2021, the victim narrated the incident to the complainant.

4. It is the case of the prosecution that on 11/01/2021, when Anuj was not around, the applicant at his residence committed sexual assault on the victim. It is alleged that the offence of penetrative sexual assault was committed on the victim on 15th January 2021. Thereafter the applicant left the victim at his home. On the basis of the aforesaid incident narrated by the victim to the complainant, the offence came to be registered.

5. The age of the applicant is 49 years and he is living with his family at the address where the incident took place. His son Anuj is a tuition teacher. The statement of the victim has been recorded under section 164 of the Code of Criminal Procedure, 1973 ("CrPC", for short) on 07/10/2021.

6. I have gone through the statement of the victim dated 11/08/2021 wherein the victim narrated about the alleged incident of penetrative sexual assault by the applicant. I have also gone through the statement of the victim recorded under section 164 of CrPC. According to learned counsel for the applicant, there are contradictions in these statements. Learned APP and learned counsel for the complainant submitted that the offence is serious in nature and the application deserves to be rejected.

7. The allegations no doubt are serious in nature. However, it is seen that in respect of incident which took place on 15/01/2021, FIR came to be lodged on 11/08/2021, almost 7 months after the incident. Learned counsel for the applicant faintly tried to contend that because the applicant demanded tuition fees payable to Anuj, which resulted in the complaint. It is not possible for me at this juncture to test this submission. The applicant and victim are residing in the same area. The medical evidence does not reveal anything incriminating against the applicant probably because the incident took place 7

months before. Factually, medical evidence is not against the applicant.

8. The applicant was arrested on 11/08/2021. The charge-sheet has been filed. The applicant is in custody for more than 1 year and 5 months and there is no possibility of trial commencing any time soon. Taking an overall view of the matter, in my opinion, the applicant can be released on bail by imposing stringent conditions. Hence, the following order.

ORDER

(a) The applicant – Tribhuvan Kasthurilal Bhardwaj, in connection with F.I.R. No. 270/2021 registered with Kalwa Police Station shall be released on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

(b) The applicant shall remove himself from the area where the victim resides and shall stay outside Thane district till the trial is over.

(c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or

any Police Officer. The Applicant should not tamper with evidence.

(d) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer of Kalwa Police Station and shall keep him updated, if there is any change and shall report on the first Monday of every month starting from December 2022 to the nearest Police Station close to his residence outside Thane district.

(e) The applicant shall not enter Thane district except for the purpose of attending the trial.

9. The application is disposed of.

(M. S. KARNIK, J.)