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

BAIL APPLICATION NO.937 OF 2023

GANESH SAYAJI MALI

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Adv. Rajas Naik for the applicant.

Mr. N. B. Patil, APP for the State-respondent No.1.

Adv. Suvarna Yadav for respondent No.2.

PSI Mahesh Munde, Karkamb Police Station, Solapur Rural.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 3, 2023

P.C. :

- 1.** Advocate Suvarna Yadav is requested to appear on behalf of the victim and assist this Court.
- 2.** Heard learned counsel for the applicant, learned APP for the State and learned counsel for respondent No.2.
- 3.** This is an application for bail in respect of the offence punishable under Sections 366, 366A, 376 of the Indian Penal Code (hereafter 'IPC' for short), under Sections 4, 5(j), 2 (L,q), 6, 10 of the Protection of Children from Sexual Offences Act, 2012 (hereafter "POCSO Act", for short)

registered on 07.01.2022 vide C.R. No.03 of 2022 with Karkamb Police Station, District Solapur.

4. The victim at the relevant time was 14 years and one month of age. The applicant was 29 years of age. The applicant is a married man having five children. It is the contention of learned counsel for the applicant that the victim voluntarily resided with the applicant and this is a case of consensual relationship.

5. In my opinion in the facts and circumstances of the present case, the consent of the victim being a minor is immaterial. I am not inclined to enlarge the applicant on bail at this stage. The applicant was arrested on 08.09.2022. Considering that the applicant is in custody almost for one year, the learned Sessions Judge is requested to record the evidence of the child witness under Section 35(1) of the POCSO Act expeditiously. Liberty to apply after the evidence of the child witness is recorded. The observations made are prima facie in nature.

6. Learned APP and learned counsel for respondent No.2 opposed the application for bail.

7. The application is disposed of.

8. I express my gratitude for the able assistance rendered by the Advocate Suvarna Yadav representing the respondent no.2.

(M. S. KARNIK, J.)