



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

BAIL APPLICATION NO.148 OF 2023

SUJIT KUMAR RAJKUMAR GUPTA ..APPLICANT
VS.
THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Mr. Babu Singh, for the Applicant.
Mr. Saurabh Pakale, for Respondent No. 2.
Mr. N.B.Patil, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 30, 2023

P.C. :

- 1.** Heard learned counsel for the applicant, learned counsel for respondent no. 2 and learned APP for the State.
- 2.** This is an application for bail in respect of the offence punishable under sections 363, 376(2)(I)(n) of the Indian Penal Code (hereafter 'IPC' for short) and under sections 4(2) of Protection of Children from Sexual Offences Act, 2012 (hereafter "POCSO Act", for short) registered vide C.R. No.0386 of 2021 with Kashimira Police Station. The First Information Report is dated 14/05/2021. The applicant was arrested on 19/05/2021.
- 3.** Learned APP and learned counsel Shri Pakale appearing for the

respondent no. 2 opposed the application. It is contended that the victim being minor, consent is immaterial and that the accusations are serious.

4. The applicant at the relevant time was unmarried aged 24 years. The victim was 14 years. In section 161 statement recorded on 19/05/2021 of the victim, she stated that there was a love affair between the applicant and the victim. They had consensual physical relationship. Section 164 of the Code of Criminal Procedure statement was recorded after filing of the charge-sheet. In that statement, the victim stated that the applicant has committed forcible sexual intercourse. Considering the age of the victim, the consent is immaterial. The applicant is in custody since 19/05/2021 i.e. almost for a period of 27 months. I am informed that even charge has not been framed. The trial is likely to take a long time to conclude. The investigation is complete charge-sheet has been filed. Continuing the applicant's custody will virtually be a pre-trial punishment. In the facts and circumstances of the present case, I am inclined to enlarge the applicant on bail. Though the applicant does not appear to be a flight risk, since it is informed that the applicant is from Uttar Pradesh, some conditions need to be imposed to ensure his presence

at the time of trial. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Sujit Kumar Rajkumar Gupta in connection with C.R. No. 386 of 2021 registered with Kashimira Police Station shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or more sureties in the like amount.
- (c) The applicant is permitted to furnish cash bail surety in the sum of Rs. 25,000/- for a period of 4 weeks in lieu of surety.
- (d) The applicant shall attend the trial regularly.
- (e) The applicant shall report to the investigating officer once in a month on every Monday of the first week between 11.00 a.m. and 1.00 p.m.
- (f) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer.
- (g) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating

Officer and shall keep him updated, in case there is any change.

(h) The applicant shall not leave the state of Maharashtra without permission of the trial Court and shall not threaten the witnesses. The applicant shall not tamper with evidence.

5. The application is disposed of.

6. I express my gratitude for the able assistance rendered by the Advocate Shri Saurabh Pakale representing respondent No.2 in these proceedings. The legal services authority may regularize the appointment of Advocate Mr. Saurabh Pakale.

(M. S. KARNIK, J.)