



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

**BAIL APPLICATION NO. 238 OF 2023
(THROUGH JAIL)**

JAYESH SANJAY SAWANT ..APPLICANT
VS.
THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Mr. Hitesh P. Mutha for the Applicant (appointed through legal aid).

Mr. Hrishikesh S. Shinde for Respondent No.2 (appointed through legal aid)

Ms. Rutuja Ambekar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 07, 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 377, 363, 341, 323, 504, 506(2) read with 34 of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereafter "POCSO Act", for short) registered on 27/12/2016 vide C.R. No.445 of 2016 with Kurar Police

Station.

3. The statement of the paternal aunt of the victim was recorded on 28/02/2017. The accusations are that on 26/12/2016 till 10.30 pm the victim did not return home. The complainant and others searched for the victim. They found the victim crying. The victim informed his aunt that some persons committed an act which is an offence punishable under the aforesaid sections. The applicant threatened the victim with the knife and again committed the offence which is punishable under the aforesaid sections for the second time. The applicant was arrested on 05/01/2017.

4. So far as the trial is concerned, only the charge has been framed. After the alleged incident took place, the victim was residing in Raipur. Presently, the victim is in Mumbai and staying at Malad which is under the jurisdiction of Kurar Police Station. On 28/08/2023 this Court passed an order requesting the trial Court to record the evidence of the victim within a period of 6 weeks. This application was not disposed of in view of the long incarceration of the

applicant and the same was kept pending. This Court felt that the appropriate course would be to ensure the evidence of the victim is recorded in terms of Section 35(1) of the POCSO Act before considering the application on merits. I do appreciate the pressure on the trial Court.

5. Though the application is opposed by the learned APP and learned counsel for respondent No.2, in view of the long incarceration of the applicant as an undertrial for the period of 6 years and 10 months with no possibility of trial concluding any time soon, as even the evidence of the child witness could not be recorded within time requested by this Court, I am inclined to enlarge the applicant on bail.

6. Learned counsel for the applicant submits that if granted bail, the applicant is willing to reside outside Mumbai/Mumbai Suburban and Palghar district. The applicant will face the consequences of trial if found guilty. Further custody will only be by way of pre-trial punishment. Nothing is placed on record as to what are the criminal antecedents recorded against the applicant. In any case, the criminal antecedents should not come in the way of the

applicant getting the benefit of the facility of bail in the facts and circumstances of the present case and considering the period of his incarceration as an undertrial. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Jayesh Sanjay Sawant in connection with C.R. No.445 of 2016 registered with Kurar 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 6 weeks in lieu of surety.
- (d) Except for the purpose of attending the trial, the applicant shall not enter the areas of Mumbai / Mumbai Suburban and Palghar district till the conclusion of the trial.
- (e) The applicant shall furnish the details of the police station close to his residence while residing outside Mumbai / Mumbai Suburban and Palghar district to the Investigating Officer as well as to the trial Court and shall keep them updated, in case there is any change. The applicant shall report to such police

station, once a month, every first Sunday of the month, between 11 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. The applicant shall not tamper with evidence.

(g) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer as well as to the trial Court and shall keep them updated, in case there is any change.

(h) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

7. The application is disposed of.

(M. S. KARNIK, J.)