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

BAIL APPLICATION NO.259 OF 2023

MOHAMMAD AZGHAR MOHAMMAD

FAROOQ SHAIKH

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Mr. M. K. Kocharekar for the applicant.

Mr. N. B. Patil, APP for the State.

Ms. Prabha Badadare for Respondent No.2.

PSI N. K. Sonawane, Bhoiwada Police Station, Bhiwandi,
Thane.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 6, 2023.

P.C. :

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for respondent No.2.

2. This is an application for bail in respect of the offence punishable under Sections 376, 376(2)(j)(n) of the Indian Penal Code (hereafter 'IPC' for short) and under Sections 4, 5(j)(ii)(I), 6, 8, 9(I), 10, 12 of the Protection of Children from Sexual Offences Act, 2012 (hereafter "POCSO Act", for short) registered on 12.07.2022 vide C.R. No.144 of 2022 with Bhoiwada Police Station.

3. The date of the incident is 09.07.2022. The applicant was arrested on 14.07.2022. The victim was 14 years of age at the relevant time. The applicant was 26 years of age. The victim and the applicant are neighbours. The victim's mother-first informant noticed something unusual about the victim and therefore asked her to undergo medical test. It was realised that she was pregnant. It is thereafter the victim informed the mother that the applicant is responsible for the act which is an offence under the aforesaid sections.

4. Learned counsel for the applicant submitted that the relations between the applicant and the victim was consensual in nature and from the materials it is evident that there was a love affair between the applicant and the victim. Having regard to the provisions of the POCSO Act and the age of the victim such consent will not assist the applicant.

5. Learned counsel for respondent No.2 submitted an affidavit of respondent No.2 that in a mutual meeting, the family decided to perform the marriage of the applicant with her daughter. Learned counsel for respondent No.2 as per

the instructions of the informant and the victim who are present in the Court insists that the informant as well as the victim has no objection if the applicant is released on bail. I am however not inclined to give weightage to such stand of the respondent No.2 in view of the age of the victim.

6. Learned APP while opposing the application for bail submitted that apart from the allegations levelled are serious, there is also a DNA report on record which indicates that the applicant is the biological parent of the femur of abortus of victim.

7. The applicant is in custody since 14.07.2022 and is now incarcerated for a period of one year and one month. There are no criminal antecedents reported against the applicant. The investigation is complete and the charge-sheet has been filed. Continued incarceration of the applicant in the present facts would be nothing but a pre-trial punishment. The trial is likely to take a long time to conclude. The applicant will face the consequences of the trial. No doubt the alleged offence is serious in nature but in the facts and circumstances of the present case, I am

inclined to enlarge the applicant on bail. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Mohammad Azghar Mohammad Farooq Shaikh in connection with C.R. No.144 of 2022 registered with Bhoiwada 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 four weeks in lieu of surety.
- (d) The applicant shall attend the Investigating Officer of Bhoiwada Police Station once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m.
- (e) 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.
- (f) 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.

(g) The applicant shall not threaten or influence the victim or establish any contact with her.

8. The application is disposed of.

(M. S. KARNIK, J.)