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

BAIL APPLICATION NO.548 OF 2023

VIVEK VISHWAS NARALKAR

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR.

..RESPONDENTS

Adv. Anjali Patil for the applicant.

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

Adv. Hrishikesh S. Shinde for respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 3, 2023

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for bail in respect of the offence punishable under Section 376 of the Indian Penal Code (hereafter 'IPC' for short), under Sections 4, 6, 8 of the Protection of Children from Sexual Offences Act, 2012 (hereafter "POCSO Act", for short) and under Section 75 of Juvenile Justice Act registered on 28.07.2022 vide C.R. No.457 of 2022 with Meghwadi Police Station.

3. It is the case of the victim who approximately was 14 years and 6 months age on the date of the incident that she

knew the applicant since March 2021 when they had met during satsang. Thereafter, the applicant and the victim were in contact with each other. The victim stated that she was in a love relationship with the applicant. Some time in May 2022, the applicant called the victim to his home. The applicant is around 25 years of age. The applicant when he was chatting with the victim suddenly came close to her and had physical relations without her consent. The victim thereafter left for home. Even thereafter she was in contact with the applicant. The victim's mother realised that something was wrong and therefore took her to the doctor when it was realised that the victim was pregnant. The victim had to undergo an abortion. The FIR thus came to be registered on 28.07.2022. The applicant was arrested on 29.07.2022.

4. Learned APP as well as learned counsel for respondent No.2 vehemently opposed the application for bail. It is submitted that having regard to the respective ages of the applicant and the victim, the offence is very serious in nature and it is further submitted that the consent of the

victim is immaterial.

5. From the reading of the materials it reveals that the applicant and the victim were known to each other and in a love relationship. The complaint was lodged after it was realised that the victim was pregnant. The applicant and the victim were in contact with each other even after the alleged act which constitutes the offence had taken place. Considering the age of the victim, there is no manner of doubt that such a consent is immaterial. The applicant is in custody for a period of one year and two months. The investigation is complete and the charge-sheet has been filed. There are no criminal antecedents reported against the applicant. In these facts the applicant can be enlarged on bail by imposing stringent conditions as prolonging the custody of the applicant will only be by way of a pre-trial punishment. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant-Vivek Vishwas Naralkar in connection with C.R. No.457 of 2022 registered with

Meghwadi 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 shall attend the Investigating Officer of Meghwadi Police Station once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m.

(d) 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.

(e) 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.

(f) Except for attending the trial and for the purpose of reporting to the Investigating Officer, the applicant shall not enter Mumbai/Mumbai Suburban District after being released on bail, till the trial concludes.

(g) The applicant shall not establish any contact with the victim.

6. The application is disposed of.

7. The trial Court is requested to record the evidence of the victim in terms of Section 35(1) of the POCSO Act expeditiously.

(M. S. KARNIK, J.)