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

BAIL APPLICATION NO. 736 OF 2023

SAHIL ABDUL KADIR KHAN

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR.

..RESPONDENTS

Adv. Akhilesh Singh i/b. Adv. Neeta Singh for the Applicant.

Mr. P. H. Gaikwad, APP for the State.

Ms. Payal Vardhan for respondent No.2.

API V. P. Nazare, Juhu Police Station.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 13, 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 Section 376 of the Indian Penal Code (hereafter 'IPC' for short) and under Sections 4, 8, 12 of the Protection of Children from Sexual Offences Act, 2012 (hereafter 'POCSO' for short) registered on 29.06.2022 vide First Information Report (FIR) No.833 of 2022 with Juhu Police Station.

3. The applicant was arrested on 05.07.2022 and is now in custody for more than one year and two months. The investigation is complete. The charge-sheet has been filed. The applicant is 21 years of age. The victim at the relevant time was 15 years of age. The applicant contacted the victim through Instagram. From the statement of the victim, prima facie, it appears that the relationship between the applicant and the victim was consensual in nature. There is variance in the statement of the victim recorded under Section 161 and 164 of the Code of Criminal Procedure. Considering the age of the victim, the question of her consent to such a relationship does not arise and therefore, consensual relationship cannot be a factor in favour of the applicant for enlarging him on bail.

4. Learned APP opposed the application for bail.

5. Ms. Payal Vardhan, learned counsel for respondent No.2 submitted that it would be risky for the victim if the applicant is enlarged on bail. Apart from opposing the application on merits, it is submitted that on one occasion the applicant had in the Court premises inflicted self injury

upon himself and thus tried to commit suicide. Learned counsel for respondent No.2 submitted that the possibility of the applicant threatening the victim cannot be ruled out.

6. Learned counsel for the applicant on instructions submitted that the applicant is willing to reside out of Mumbai and Mumbai Suburban district till the conclusion of the trial.

7. Considering the age of the applicant, the fact that the investigation is complete and the charge-sheet has been filed and considering that the applicant is in custody for more than one year and two months, the applicant can be enlarged on bail. There are no criminal antecedents reported against the applicant. To allay the apprehension of the victim, stringent conditions can be imposed on the applicant. In the facts and circumstances of the present case, the applicant can be enlarged on bail. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Sahil Abdul Kadir Khan in connection with FIR No.833 of 2022 registered with

Juhu 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 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, the applicant shall not enter Mumbai and Mumbai Suburban district after being released on bail, till the trial concludes.

(g) The applicant shall attend the trial regularly.

(h) Any attempt on the part of the applicant to contact or influence the victim will be viewed seriously which may result in cancellation of bail.

8. The application is disposed of.

9. I express my gratitude for the able assistance rendered by the Advocate Payal Vardhan representing

respondent No.2. Learned advocate may be paid the fees as prescribed by the Legal Aid Services Authority or if not prescribed, same may be quantified at Rs.5,000/-.

(M. S. KARNIK, J.)