



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

BAIL APPLICATION NO. 1138 OF 2023

KAPIL @ JALINDHAR MANOHAR

NAIKODI

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Adv. S.P. Hushirg i/b Adv. B.A. Aloor for the Applicant.

Mr. Amit Icham i/b Mr. Aashish Satpute for Respondent No.2.

Ms. Rutuja Ambekar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 08, 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, 452 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 01/01/2022 vide C.R. No.01 of 2022 with Junnar Police Station, Solapur.
3. The victim is a minor boy aged about 11 years. The applicant was 32 years of age at the relevant time. I have

perused the statement of the victim which was recorded under Section 164 of the Code of Criminal Procedure (Cr.P.C.) on 08/04/2022. The applicant was arrested on 08/05/2022. Learned counsel for the applicant submitted that this is a clear case of false implication. It is submitted that there is a dispute ongoing between the families of the applicant and the victim on account of the running of the liquor business. It is further submitted that the medical evidence does not support the case of the applicant. Learned counsel for the applicant submitted that the applicant's liberty should not be deprived on the basis of such vague medical evidence, particularly when the possibility of false implication cannot be ruled out.

4. I have perused the materials on record and the statement of the victim recorded under Section 164 of the Cr.P.C. which clearly shows the manner in which the act was committed by the applicant. The medical endorsement shows that "as per the history given by the victim and his mother and his physical and clinical examination, Anal intercourse can not be denied, however, the samples are

sent for forensic laboratory. A blood is collected." *Prima facie*, in my opinion, the accusations are serious in nature. At this stage, there is no material on record to show the possibility of false implication. In my opinion, liberty can be granted to the applicant to apply for bail after the evidence of the child witness is recorded in view of the mandate of Section 35(1) of the POCSO Act. The trial is, therefore, requested to record the evidence of the child witness expeditiously under Section 35(1) of the POCSO Act preferably within a period of 6 months from today.

5. Considering that the applicant is in custody since 08/05/2022, the applicant is at liberty to apply for bail after the period of 6 months or after the evidence of the child witness is recorded under Section 35(1) of the POCSO Act whichever is earlier.

6. The application is disposed of in the above terms.

7. This order shall be placed before the trial Court for consideration.

(M. S. KARNIK, J.)