



PMB

929. BA 1063-23.doc

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

BAIL APPLICATION NO.1063 OF 2023

SAMIR MOHAN HARMALE

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR.

..RESPONDENTS

Adv. Ujwal Agandsurve for the applicant.

Ms. Veera Shinde, APP for the State-respondent No.1.

Adv. Vilasini Balasubramanian for respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 7, 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)(F), 506 of the Indian Penal Code (hereafter 'IPC' for short) and under Sections 4, 8, 9(N), 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereafter 'POCSO' for short) registered on 13.09.2022 vide C.R. No.139 of 2022 with Devrukh Police Station, District Ratnagiri.

3. The date of the incident is 02.09.2022. The applicant was arrested on 13.09.2022. The applicant at the relevant

time was 24 years of age and the victim was 17 years and 11 months of age. The applicant is the cousin brother of the victim. It is the allegation that on the date of the incident the applicant committed forcible sexual intercourse on the victim.

4. Learned counsel for the applicant submitted that there is a delay in registering the FIR. It is further submitted that the relations between the applicant and the respondent No.2 are consensual in nature. Having regard to the provisions of the POCSO Act the consent of the victim is immaterial. In any case I do not want to make any observations as the trial is ongoing and as many as six witnesses have already been examined. It is submitted by learned counsel for the applicant that the trial Court is presently without a presiding officer. In such circumstances, the trial may take some time to conclude.

5. Learned APP as well as learned counsel for respondent No.2 opposed the application for bail.

6. Considering that the evidence of the child witness is already recorded, the question of tampering with the

material witness now does not arise. In the facts and circumstances of the present case, though learned APP as well as learned counsel for respondent No.2 opposed the application for bail, I am inclined to enlarge the applicant on bail by imposing stringent conditions considering that the applicant is already in custody for more than a year. The applicant is not a flight risk. He will face the consequences of the trial. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Samir Mohan Harmale in connection with C.R. No.139 of 2022 registered with Devrukh Police Station, District Ratnagiri 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) 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) During the pendency of the trial the applicant shall not reside in Devdhe, Harmalewadi, Taluka Lanja, District Ratnagiri.

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

(h) The applicant shall not leave the State of Maharashtra without the permission of the trial Court.

(i) The applicant shall not to contact the victim or any of the family members.

7. The application is disposed of.

8. I express my gratitude for the able assistance rendered by the advocate-Ms. Vilasini Balasubramanian representing the respondent No.2.

9. The Legal Services Authority may regularize the appointment of Ms. Vilasini Balasubramanian.

(M. S. KARNIK, J.)