



Diksha Rane

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1237/2023**

MITHUN VIJAYKANT CHAVAN

..APPLICANT

VS.

THE STATE OF MAHARASHTRA & ANR.

..RESPONDENTS

Adv. Pramod Pandey a/w. Adv. Gopal Pandey for the applicant.

Ms. Rutuja Ambekar, APP for the State.

Adv. Sushan Mhatre for the respondent no.2.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 12, 2023.

P.C. :

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

2. This is an application for bail in respect of the offence punishable under Sections 376(2)(f)(n), 354(A), 354(B) of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 5 (N)(J)(L), 6, 7, 8, 9(N), 10 of the Protection of Children from Sexual Offences Act, 2012 (hereafter 'the POCSO Act' for short) registered on 17/11/2021 vide C.R. No.1166/2021 with Andheri Police Station, Mumbai.

3. The victim, at the relevant time, was 16 years, 11 months and 13 days old. There are in all two accused. The

applicant is the original accused no.2. The victim has made allegations against the accused no.1 who is her father. The victim underwent an abortion. The DNA matched with that of the present applicant.

4. Learned APP as well as learned counsel for the respondent no.2 submit that the victim is a minor and her consent is immaterial. It is further submitted that the DNA report would go to show the complicity of the applicant.

5. The applicant was arrested on 20/11/2021 and now is in custody for more than two years. At the relevant time, the applicant was 21 years of age. The victim being a minor, her consent is immaterial. The relationship between the parties is consensual in nature. Even the victim has so stated. The victim appears to be of the age of understanding.

6. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported against the applicant. The applicant does not appear to be a flight risk. Considering that the applicant is in custody for more than two years with no possibility of the trial concluding any time soon, I am inclined to enlarge the applicant on bail. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Mithun Vijaykant Chavan in connection with C.R. No.1166/2021 registered with Andheri Police Station, Mumbai, shall be released on bail on his furnishing P.R. Bond of Rs.15,000/- with one or more sureties in the like amount.
- (c) The applicant is permitted to furnish cash bail surety in the sum of Rs.15,000/- 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. The applicant shall not establish any contact with the victim.
- (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) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.
- (g) The applicant shall surrender his passport, if any, to the investigating officer.

7. The application is disposed of.

8. I express my gratitude for the able assistance rendered by advocate Sushan Mhatre representing the respondent no.2. His engagement be regularised by the Legal Services Authority.

(M. S. KARNIK, J.)