



Diksha Rane

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

BAIL APPLICATION NO.1305/2023

SHAILESH PANDURANG KADAM

..APPLICANT

VS

STATE OF MAHARASHTRA & ANR.

..RESPONDENTS

Adv. Kuldeep Patil i/b. Adv. Saili Dhuru for the applicant.
Ms. Veera Shinde, APP for the State.
Adv. Supriya Kak for the respondent no.2.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 8, 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 363, 376, 376(2)(n) read with 34 of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 6 and 10 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO", for short) registered on 8/8/2022 vide C.R. No.896/2022 with Dindoshi Police Station, Mumbai.
- 3.** There are two accused. The applicant is the accused

no.2. The statement of the victim, who was 16 years and 6 months old at the relevant time, was recorded on 9/8/2022. In the statement under Section 161 of the Code of Criminal Procedure (hereafter 'the Cr.P.C.' for short), she names the accused no.1 as the one who had forcible sexual intercourse with her. In the supplementary statement dated 15/8/2022, apart from naming the accused no.1, the victim names the present applicant (accused no.2) as also the one who committed forcible sexual intercourse on her sometime in February 2022 and thereafter on couple of occasions.

4. The statement under Section 164 of the Cr.P.C. was recorded on 5/9/2022. In the said statement under Section 164, the victim names only accused no.1 as the perpetrator. Further the DNA report excludes the applicant to be the biological father. The DNA report mentions that the accused no.1 is the biological father as the victim had become pregnant. Learned counsel for the applicant submitted that the applicant will reside outside the jurisdiction of the Dindoshi Police Station till further orders of the trial Court. Statement is accepted.

5. Learned APP as well as learned counsel for the

respondent no.2-victim appointed by this Court opposed the application. It is submitted that the victim in her supplementary statement has clearly named the present applicant as one of the perpetrators along with the accused no.1. It is submitted that the victim at the relevant time was 16 years of age and therefore, she being a minor, her consent is immaterial even if it is the case of learned counsel for the applicant that the relationship is consensual in nature. It is further submitted that there is no reason to doubt the version of the victim as she specifically deposed about the applicant indulging in the act which is the offence punishable under the aforesaid sections only because the DNA report excludes the applicant to be the biological father.

6. The applicant was arrested on 23/8/2022 and is in custody for more than one year and two months with no possibility of the trial concluding any time soon. The applicant's name does not figure in the statement under Section 161 of the Cr.P.C. which was recorded on 9/8/2022 and the statement of the victim under Section 164 of the Cr.P.C. The DNA report excludes the applicant to be the

biological father. As the investigation is complete and the charge-sheet has been filed, prolonging the custody would amount to a pre-trial punishment. The applicant will face the consequences post trial if the charges levelled against him are proved. There are no criminal antecedents reported against the applicant. The applicant does not appear to be a flight risk. In the facts and circumstances of the case, the applicant can be enlarged on bail. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant - Shailesh Pandurang Kadam in connection with C.R. No.896/2022 registered with Dindoshi Police Station, Mumbai, 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) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(g) Except for attending the trial, the applicant shall not enter the jurisdiction of the Dindoshi Police station, Mumbai, after being released on bail, till the trial concludes.

(h) 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 Ms. Supriya Kak representing the respondent no.2. Her engagement be regularised by the Legal Services Authority.

(M. S. KARNIK, J.)