



Diksha Rane

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

BAIL APPLICATION NO.1580/2023

RAJESH @ ZULFIKAR SHAIKH
VS.

..APPLICANT

THE STATE OF MAHARASHTRA & ANR.

..RESPONDENTS

Adv. Lochan Chandka a/w. Adv. Rounak Naik for the
applicant.

Mr. N. B. Patil, APP for the State.

Adv. Saili Dhuru for the respondent no.2.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 27, 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 Section 376(2)(n) of the Indian Penal Code
(hereafter 'IPC' for short) read with Sections 4, 8 of the
Protection of Children from Sexual Offences Act, 2012
(hereafter "POCSO Act", for short) registered on 3/10/2019
vide C.R. No.329/2019 with Vashi Police Station, Navi
Mumbai.

3. Learned APP and learned counsel for the respondent

no.2 opposed the application for bail.

4. Learned counsel for the applicant submitted that as per the mother's statement, the age of the victim was 15 years at the relevant time. However, learned counsel for the respondent no.2 submitted that as per school leaving certificate, the age of the victim was 10½ years. It is submitted that the victim became pregnant as a result of the act committed by the applicant and she has delivered a child. It is prayed that the application for bail can be rejected.

5. The applicant was arrested on 4/10/2019 and is in custody for more than 4 years with no possibility of the trial concluding any time soon. The charge has been framed. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported against the applicant.

6. As per the statement of the mother, the age of the victim is reflected as 15 years. The radiographic bone age of the victim is indicated as 16 years plus/minus 6 months. As per the document at page 43, the dental age of the victim is indicated as 17 years.

7. The statement of the victim, *prima facie*, reveals that the relationship between the applicant and the victim was consensual in nature. However, looking at the age of the victim such consent is immaterial.

8. The applicant at the relevant time was 22 years of age. Considering the age of the applicant, now that the applicant is in custody for more than four years as an undertrial with the possibility of the trial concluding any time soon appearing remote, the applicant's incarceration as an undertrial cannot be continued as a pre-trial punishment. The applicant shall face the consequences of the trial. In the facts and circumstances of the present case, the applicant can be enlarged on bail. The applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant- Rajesh @ Zulfikar Shaikh in connection with C.R. No. 329/2019 registered with Vashi Police Station, Navi 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 attend the Investigating Officer of Vashi police station once in three months on first Saturday of the concerned month between 11:00 a.m. to 1:00 p.m. commencing December, 2023 till the trial concludes.

(e) 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.

(f) 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.

(g) Except for attending the trial and for the purpose of reporting to the Investigating Officer, the applicant shall not enter the jurisdiction of the Navi Mumbai area after being released on bail, till the trial concludes and shall not make any attempt to contact the complainant or the victim.

(h) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not

seek unnecessary adjournments.

(i) The applicant shall surrender his passport, if any, to the investigating officer.

9. The application is disposed of.

10. I appreciate the assistance rendered by Advocate Ms. Saili Dhuru, who appeared on behalf of the respondent no.2 at my request. Learned advocate may be paid the fees/honorarium as prescribed by the Legal Aid Services Authority or if not prescribed, the same is quantified at Rs.5000/-.

(M. S. KARNIK, J.)