



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

BAIL APPLICATION NO. 1863 OF 2023

NEERAJ YOGENDRA YADAV

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Mr. U.L. Singh for the Applicant.

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

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 09, 2023

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for bail in respect of the offence punishable under Sections 376(2)(n), 376(DA), 354, 506 and 34 of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act" for short), registered on 01/02/2022 vide C.R. No.37 of 2022 with Bangur Nagar Police Station, Mumbai.

3. There are 2 accused in all. The applicant is accused No.2. At the relevant time the victim was 13 years of age and the applicant was 19 years of age. The statement under

Section 161 of the Code of Criminal Procedure ("Cr.P.C." for short) was recorded on 02/02/2022. The accusations of the victim are that on various dates commencing 10/11/2021, the accused raped her. The accused No.1 – Arjun was known to the victim and he was residing in the vicinity. The victim was called by the accused No.1 to his house where he committed rape on her and took a video. Thereafter, a friend of accused No.1 i.e. present applicant also committed rape on her person threatening her that the video will be made viral.

4. Learned counsel for the applicant submitted that there is a delay in registering the First Information Report. It is further submitted that except the birth certificate of the applicant which is from Telangana, there is nothing to indicate that the victim is a minor i.e. 13 years of age. Learned counsel for the applicant also submits that there is some inconsistency in the statements of the victim recorded under Sections 161 and 164 of the Cr.P.C. It is further submitted that the medical report does not support the case of the prosecution and so far as the present applicant is

concerned, it is a completely false case because the major allegations primarily are against accused No.1 with whom the victim was having a love relationship.

5. As the victim was hardly 13 years of age when the aforesaid offence was committed, her consent is immaterial. On the basis of materials, I am *prima facie*, of the opinion that this is not be a case of false implication. At this juncture, it is not possible to doubt the statement of the minor victim. In this view of the matter, I am not inclined to enlarge the applicant on bail.

6. The application is rejected.

7. The applicant is at liberty to file an application for bail after the evidence of the child witness is recorded in terms of Section 35(1) of the POCSO Act.

8. The trial Court is requested to record the evidence of the child witness in terms of Section 35(1) of the POCSO Act expeditiously.

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

(M. S. KARNIK, J.)