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

BAIL APPLICATION NO.2148 OF 2023

HANMANT YASHWANT KADAM

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR.

..RESPONDENTS

Adv. Kalpesh U. Patil for the applicant.

Ms. Rutuja Ambekar, APP for the State.

Adv. Saurabh Pakale for respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 13, 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 363, 366, 376(2)(n), 506 of the Indian Penal Code (hereafter 'IPC' for short) and under Sections 4, 8, 12 of the Protection of Children from Sexual Offences Act, 2012 (hereafter "POCSO Act", for short) registered on 06.04.2023 vide C.R. No.216 of 2023 with Akluj Police Station, District Solapur.

3. The FIR was registered on 06.04.2023 for the offence punishable under Section 363 of the IPC as the victim was

a minor. On 17.04.2023 the additional offences punishable under Sections 376(2)(n), 366, 506 of the IPC read with Sections 4, 8, 12 of the POCSO Act were added. The applicant was arrested on 17.04.2023. The applicant at the relevant time was 22 years of age and the victim was 17 years of age.

4. Learned APP as well as learned counsel for respondent No.2 opposed the application for bail. It is submitted that the victim at the relevant time was a minor and her consent is immaterial. It is further submitted that there is one more antecedent against the present applicant under the provisions of the POCSO Act. The applicant was enlarged on bail and during this period the applicant has committed the present offence.

5. Learned counsel for the applicant submitted that the applicant had performed the marriage with the victim. It is further submitted that the applicant is desirous of residing with the victim and stands by the fact that the applicant and the victim are married.

6. A perusal of the statement of the victim recorded

under Section 164 of the Code of Criminal Procedure would go to show that the victim is not supporting the case of the prosecution. The victim has stated in Section 164 statement that she has on her own called the applicant and gone with him. She further stated that during the period she was with the applicant, there were no physical sexual relations she had with the applicant.

7. The applicant is in custody for more than seven months. The investigation is complete and the charge-sheet has been filed. Looking at the age of the applicant and in the facts and circumstances of the present case, considering the materials on record, I am inclined to enlarge the applicant on bail. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant-Hanmant Yashwant Kadam in connection with C.R. No.216 of 2023 registered with Akulj Police Station, District Solapur 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 Akluj Police Station once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m. Depending on the conduct of the applicant the applicant may apply to the trial Court for modification of this condition at a later stage.

(e) It is made clear that if the applicant is found indulging in similar offences or any other offence in future it is open for the prosecution to apply for cancellation of bail.

(f) 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.

(g) 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.

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

8. The application is disposed of.

9. I appreciate the valuable assistance rendered by Mr. Saurabh Pakale, the learned advocate, who appeared on behalf of respondent No.2 in this proceeding. Learned advocate may be paid the fees as prescribed by the Legal Aid Services Authority or if not prescribed, the same is quantified at Rs.5,000/-.

(M. S. KARNIK, J.)