



Diksha Rane

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

BAIL APPLICATION NO.2215/2023

RIZWAN HAIDAR SHAUKATALI

IDRISI @ CHOTKA

VS.

XYZ AND ANR.

..APPLICANT

..RESPONDENTS

Adv. Adenwala a/w. Adv. Mehboob Shaikh for the applicant.

Mr. P. H. Gaikwad, APP for the State.

Adv. Sagar G. Sonavane for the respondent no.1.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 15, 2023.

P.C. :

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

2. This is an application for bail in respect of the offence punishable under Sections 376, 376(2)(n), 376(2)(i), 376(3), 506 of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereafter "POCSO Act", for short), registered on 9/3/2023 vide C.R. No.250/2023 with Shivaji Nagar Police Station, Govandi, Mumbai.

3. The applicant was arrested on 9/3/2023. The First

Information Report (FIR) was lodged by the mother of the victim. It is the case of the prosecution that the victim at the relevant time was 13 years of age. The applicant, who was 26 years of age, committed the act on the victim which is an offence punishable under the aforesaid sections. It is the prosecution case that the victim was threatened by the applicant not to disclose anything to her parents. It was later realized that the victim was pregnant. She underwent an abortion. The results of analysis of the Forensic Science Laboratories reveal that the victim is concluded to be the biological mother of Femur bone of abortus of the victim. However, the applicant is excluded to be biological father of Femur bone of abortus of the victim.

4. Moreover, learned counsel appeared on behalf of the complainant and submitted that the complainant has no objection for enlarging the applicant on bail. The complainant, who is personally present stated that such statement is voluntary and there is no pressure on her. An affidavit of the complainant has been tendered saying that the complainant and the victim have no objection for enlarging the applicant on bail.

5. Learned APP while opposing the application submitted that the offence is serious. The statement of the victim under Section 164 of the Code of Criminal Procedure supports the prosecution case and further submitted that the possibility of pressurizing the victim and the complainant cannot be ruled out. It is submitted that considering the age of the victim, the applicant should not be enlarged on bail.

6. I am not impressed with the concession given by the complainant that the applicant be enlarged on bail looking at the age of the victim. There are no criminal antecedents reported against the applicant. However, in the facts and circumstances of the present case, considering that the applicant is in custody for more than nine months coupled with the Forensic Science Laboratories report and as now the investigation is complete and the charge-sheet has been filed, I am inclined to enlarge the applicant on bail. Any further incarceration can only be by way of a pre-trial punishment. There is no possibility of the trial commencing any time soon. The applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Rizwan Haidar Shaukatali Idrisi @ Chotka in connection with C.R. No.250/2023 registered with Shivaji Nagar Police Station, Govandi, 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.
- (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 not reside within the jurisdiction of Shivaji Nagar Police, Govandi, Mumbai.

(h) The applicant shall not establish contact or try to threaten the victim or her family members.

(i) It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

7. The application is disposed of.

(M. S. KARNIK, J.)