



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

BAIL APPLICATION NO. 2501 OF 2023

ADITYAKUMAR@JIVACHKUMAR

UPENDRA SINGH

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Mallika Sharma i/b. Adv. Anjali Patil for the Applicant.

Adv. Arun K. Rajput for the original complainant.

Ms. Veera Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 26, 2023

P.C. :

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

2. This is an application for bail in respect of the offence punishable under Sections 376(2)(I)(N) of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 4(2), 5 (J) (2), 6, 9(N) and 10 of the Protection of Children from Sexual Offences Act, 2012 (hereafter "POCSO Act", for short) registered on 22/6/2022 vide C.R. No.129/2022 with Badlapur Police Station.

3. The victim at the relevant time was 14 years of age. The victim's father noticed that the victim was restless and

therefore, inquired with her. Upon medical examination, it was revealed that the victim was pregnant. The First Information Report (FIR) is dated 22/6/2022 which was lodged by the complainant. It was stated that the applicant who is 20 years of age and closely related to the victim had sexual relations with her. According to the victim, the relationship was consensual in nature. Considering the age of the victim, such a consent is immaterial. The complainant – father of the victim has filed an affidavit stating that the doctor of the Sir J. J. Hospital pressurized them to lodge the FIR. He further stated that the complainant as well as the victim do not want to pursue any legal action against the applicant and that the matter has been amicably settled between the parties. It is further stated that the complainant has no objection if the applicant is enlarged on bail. The affidavit is taken on record.

4. The complainant and the victim are present in the Court. Learned counsel for the complainant stated that the victim is firm in her stand that she does not want to pursue the case against the applicant and she has no objection if the applicant is enlarged on bail.

5. I am concerned with the accusations made against the applicant having regard to the stringent provisions of the POCSO Act. Though the aforesaid stand taken by the complainant and the victim may not by itself be a consideration for enlarging the applicant on bail, in my opinion, having regard to the facts and circumstances of the present case where the applicant is a young boy of 20 years of age who is in custody for more than one year and three months with no possibility of the trial concluding any time soon, further as the investigation is complete and the charge-sheet has been filed, in my opinion, continuance of the custody of the applicant will only be by way of pre-trial punishment. There are no criminal antecedents reported against the applicant. The applicant will face the consequences post-trial if found guilty. In my opinion, the applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant- Adityakumar @ Jivachkumar Upendra Singh in connection with C.R. No.129/2022 with Badlapur

Police Station, 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.

6. The application is disposed of.

(M. S. KARNIK, J.)