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

BAIL APPLICATION NO.4097/2021

ABHAY ANANT GAMRE

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Sunil R. More for the applicant.

Mr. S. H. Yadav, APP for State.

Adv. Swaraj Jadhav for the respondent no.2.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 13, 2023.

P.C. :

1. Heard learned counsel for the applicant. Learned APP for the State and learned counsel for the respondent no.2 opposed the application for bail.

2. This is an application for bail in respect of First Information Report (FIR) No.46/2021 registered with the Aarey Police Station, under Section 376(2)(f)(n) of the Indian Penal Code, 1860 (hereafter "the 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).

3. The victim on the date of lodging the FIR was 17 years

and 10 months old. At the relevant time, when the relationship between the victim and the applicant began, the victim was about 16 years of age. From the reading of the FIR reveals that the relationship between the victim and the applicant was consensual in nature. The applicant is a close relative of the victim. The victim stated that the applicant had promised to marry with her and on that count had physical relations with her which continued for a period from February 2019 to April 2020. Thereafter, the victim became pregnant and delivered a child which she has given in adoption. It is alleged that the applicant was ill-treating the victim and also assaulting her. When she was unable to bear the suffering, the victim started residing with her father again.

4. On record is a statement under Section 164 of the Code of Criminal Procedure which mentions that the applicant and the victim had a love affair and the physical relations between them were consensual in nature. No doubt, the age of the victim makes such consent immaterial. As indicated earlier, at the time of lodging in FIR, the victim was 17 years and 10 months old and at the

time when the relationship of the applicant and the victim began, she was 16 years of age. The nature of accusations will have to be balanced in the present case with the period that the applicant spent in custody and time required to conclude the trial. There is no possibility of the trial concluding any time soon. The applicant is in custody almost for a period of two years. Any further incarceration would only be by way of a punishment. The applicant will face the consequences of the outcome of the trial. In the facts of the present case, I am inclined to release the applicant on bail as there are no criminal antecedents reported against the applicant. The investigation is complete. The charge-sheet has been filed. Hence the following order.

ORDER

(a) The application is allowed.

(b) The applicant in connection with FIR No.46/2021 registered with the Aarey 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 shall attend the trial regularly.

(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 not establish any contact with the respondent no.2.

5. The application is disposed of.

6. I express my gratitude for the able assistance rendered by the advocate Mr. Swaraj Jadhav representing the respondent no.2.

(M. S. KARNIK, J.)