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

**CRIMINAL APPEAL NO.50 OF 2024**

SACHIN RAGHUNATH TOKE

..APPELLANT

VS.

1. THE STATE OF MAHARASHTRA

2. X.Y.Z. (VICTIM)

..RESPONDENTS

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Adv. Abhay A. Jadhavar for the appellant.

Ms. S. D. Shinde, APP for the State.

Adv. Prashant Jadhav for respondent No.2.  
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**CORAM : M. S. KARNIK, J.**

**DATE : JANUARY 22, 2024**

**ORAL JUDGMENT :**

1. Heard learned counsel for the appellant, learned APP for the State and learned counsel for respondent No.2.

2. By the judgment and order dated 02.04.2019, Criminal Appeal No.361 of 2019 for bail filed by the appellant was dismissed on merits. This is a second attempt to seek bail. For convenience the judgment and order dated 02.04.2019 is reproduced which reads thus :-

"1. Heard. Admit.

2. Heard finally, considering the fact that this appeal is challenging the order dated 16<sup>th</sup> January, 2019 passed by the learned Special Judge, Pune, rejecting the application for grant of bail moved by the Appellant-accused Sachin Toke in C. R. No. 372 of 2018 for offences punishable under S. 376(3), 506 read with 34 of the Indian Penal Code, as well as S. 4, 6, 8, 10 & 12

of Protection of Children from Sexual Offences Act, 2012 (for short the "POCSO Act") and S. 3(1)(w), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short the "Atrocities Act").

3. The learned counsel for the Appellant-accused vehemently argued that report of the medical examination of the victim female child is not reflecting the fact that she was subjected to forcible penetrative sexual assault. He further argued that as per the FIR lodged by Respondent No. 2 – First Informant, alleged obscene video recording clips were seen by Nikita, who appears to be friend of Respondent No. 2. However, her statement does not reflect the fact that she has seen any obscene video of the first informant and the Appellant accused. It is further argued that statement of Sejal, who happens to be sister of the Appellant-accused does not reflect that video clip seen by her was containing any obscene material. The learned counsel further argued that FIR was lodged on 21.9.2018 whereas the alleged incident took place on 5.9.2019 as well as before that day. With this, the learned counsel argued further pretrial detention of the Appellant-accused is not warranted.

4. On the other hand, the learned APP supported the impugned order by contending that medical evidence is supporting the statement of the victim female child, Respondent No. 2 in respect of penetrative sexual assault.

5. We have considered the submissions so advanced and also perused the material placed on record, including the FIR as well as report of the medical examination of the victim female child. It is seen that the victim female child – Respondent No. 2 is a child of 15 years. She has categorically mentioned the fact that at least on three occasions, she was subjected to penetrative sexual assault by the Appellant-accused, on the pretext of deleting selfie as well as video clips revealing the victim female child and the Appellant-accused in intimate position. Even if we ignore this fact, that the act was because of allurements of deleting the video clips, still statement of the victim female child shows that she was subjected to penetrative sexual assault by the Appellant-accused. Version of the victim female child is gaining corroboration from report of her medical examination. Similarly, statement of witnesses show that they had seen the victim female child as well as Appellant-accused together. In this view of the matter, considering the fact that there is prima-facie complicity of the Appellant-accused in the alleged offence, no case for interference is made out, as also no infirmity can be found in the impugned order rejecting the claim of the Appellant-accused for his release on bail. In this view of the matter, appeal is dismissed.

6. However, the learned Special Judge / trial court shall abide by the provisions of Section 35 of the POCSO Act to complete the trial within a period of one year from the date of taking cognizance of the offence. Needless to state that all observations made herein are prima-facie and shall have no bearing on the trial. Appeal is accordingly disposed of."

3. This Court had while rejecting the earlier bail application in paragraph 6 observed that the Special Judge shall abide by the provisions of Section 35 of the Protection of Children from Sexual Offences Act (for short the "POCSO Act") to complete the trial within a period of one year from the date of taking cognizance of the offence. The order was passed as far back as on 02.04.2019. I am informed that the trial has progressed to the stage where only the evidence of the victim has been recorded. The trial is likely to take some time. As the victim who is the prime witness is now examined, the question of tampering with the prime witness is ruled out.

4. The appeal is seriously opposed by learned APP and learned counsel for respondent No.2. It is contended that the offence alleged is serious in nature and no indulgence be shown to the appellant having regard to the nature of the allegations.

5. The appellant does not appear to be a flight risk. It was submitted by learned counsel for the appellant that the victim who was then around 15 years of age was in a love relationship with the appellant. However having regard to the provisions of POCSO Act, consent of a minor is immaterial. It needs to be considered that the appellant is in pre-trial custody for almost five years and six months. The victim has now been examined. As far back as on 02.04.2019 this Court had directed the Special Judge to complete the trial within a period of one year from the date of taking cognizance of the offence. According to me the pre-trial detention is sufficiently prolonged. In my opinion, prolonging the custody of the appellant any further will be in the nature of a pre-trial punishment. The appellant at the relevant time was young boy of 20 years of age.

6. The appeal is accordingly allowed. The appellant is enlarged on bail on his furnishing P.R. Bond of Rs.15,000/- with one or more sureties in the like amount. The appellant is permitted to furnish cash bail surety in the sum of Rs.15,000/- for a period of 4 weeks in lieu of surety. The

appellant shall not reside in the area of Khed taluka till the conclusion of the trial except for the purpose of attending the trial. The appellant shall attend the trial regularly. The appellant shall co-operate with the trial Court and shall not seek unnecessary adjournments. On being released on bail, the appellant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change. The appellant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

7. The appeal is disposed of in the above terms.

8. I appreciate the assistance rendered by Advocate Prashant Jadhav who appeared on behalf of respondent No.2 appointed through Legal Aid Services Authority.

**(M. S. KARNIK, J.)**