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

BAIL APPLICATION NO.142 OF 2024

SANDEEP SUBEDAR TIWARI ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Adv. Anjali Patil a/w Adv. Tohid Shaikh for the applicant.
Mr. Swapnil V. Walve, APP for the State.
Adv. Gaurav Parkar for the victim.

CORAM : M. S. KARNIK, J.

DATE : APRIL 24, 2024.

P.C. :

- 1.** Heard learned counsel for the applicant, learned APP for the State and learned counsel for the victim.
- 2.** This is an application for bail in respect of the offence punishable under Sections 354-D, 323, 500, 506, 376(2)(n) of the Indian Penal Code (hereafter 'IPC' for short) and under Section 67(A) of the Information Technology Act registered on 08.12.2022 vide C.R. No.783 of 2022 with D. N. Nagar Police Station.
- 3.** The applicant was arrested on 08.12.2022. This is the second application for bail. The earlier Bail Application No.1723 of 2023 filed by the applicant in this Court was

withdrawn on 06.09.2023 with liberty to apply after six months, if the trial does not progress substantially. There is no progress in the trial.

4. The application is opposed by learned APP and learned counsel appearing on behalf of the victim. Learned counsel for the victim submitted that the accusations are serious. It is submitted that the applicant took advantage of young age of the victim while committing the aforesaid offence. It is further submitted that there is every possibility of the applicant having objectionable videos and pictures of the victim on the electronic devices in possession of the applicant. An apprehension is expressed that the applicant to seek revenge is likely to circulate such objectionable materials in his possession and thereby tarnish the image and reputation of the victim. It is submitted that the conduct of the applicant in the past is sufficient to deny him the facility of bail.

5. I have carefully perused the statement of the victim as well as the incriminating materials in the charge-sheet. *Prima facie* on a reading of the statement of the victim,

according to me, the possibility of consensual physical relationship cannot be ruled out. To allay the apprehension of the victim that the applicant may circulate the objectionable materials, the applicant has filed an affidavit affirmed on 27.03.2024 which is taken on record and marked as Exhibit 'X' for identification. Paragraph 3 to 10 of the affidavit reads thus :-

"3. I say that I undertake to stay away from the locality where the Complainant resides and I also undertake not to contact the complainant or her family members or witnesses through any electronic medium or personally.

4. I say that apart from the mobile seized by the investigation agency I have no any other electronic devices. I undertake no to contact the complainant through any electronic means or through any other mobile numbers. I further state that I will not access my email id as mentioned on page no. 206 or any other email id to contact the complainant.

5. I say that I undertake to cooperate with the investigation officer to provide all my email id's and cloud id's which I have and I undertake to delete all the data if any available in my email Id's or in my cloud Id's.

6. I say that I undertake to cooperate with investigation officer to provide all my access to my email id's and what so ever necessary.

7. I say that I undertake not to tamper with the witnesses and evidences filed along with the charge sheet and undertake to co-operate with the trail.

8. I say that I will not travel abroad without prior permission of this Hon'ble court.

9. I say that as charge sheet has being filed, I undertakes to attend the concern police station as and when directed by this Hon'ble court and also undertakes to attend the trial court dates regularly.

10. I say that whatever stated in the above paragraphs are true to my knowledge and belief and made without any coercion, pressure or undue influence from anybody whatsoever in nature."

6. Further learned counsel on instructions submitted that over and above what is stated in the affidavit the applicant is ready to abide by the following :-

(1) The applicant will surrender his passport with the investigating agency and that he will seek prior permission of the trial Court before travelling abroad.

(2) The accused will not enter Mumbai/Mumbai Suburban District till the trial concludes except for the purpose of reporting to the Investigating Officer and the trial Court.

(3) The applicant shall attend the Investigating Officer once in two months commencing May 2024.

(4) The applicant or any member of his family or friends will not directly or indirectly contact the victim or her family or witness.

(5) The applicant before his release on bail shall give full details of his electronic devices to the Investigating Officer. It is open for the Investigating Officer to take further appropriate steps in so far as the security of the devices and safe custody of the data is concerned.

(6) The applicant before his release shall file an

affidavit that the electronic devices which he submits and or other materials which he has relating to the victim are the only materials available with him.

(7) If any photo or video or any data to be found in any of his devices gets uploaded or sent by accused or anyone related to him directly or indirectly using his own or any other social media account, messenger accounts, emails or for that sake any form of electronic medium, the victim and/or the prosecution will be at liberty to apply for cancellation of this bail.

(8) The phone numbers 9819944624, 8082797579, 7021006100, 7021287845 and 7977566903 will not be activated by accused for himself or anyone he knows directly or indirectly.

(9) The security of the cloud of the phone which is with the forensic department may be changed by cyber-crime expert in order to ensure that the applicant does not get access to the same.

(10) The email addresses mentioned below and/or the detail of any other existing email addresses which the applicant used have to be handed over to the Investigating Officer :-

sandyskates1225@gmail.com

wishfck1@gmail.com

myshoesize9@gmail.com

myshoesize11@icloud.com

sandeepskatingacademy@gmail.com
ssaskatingacademy@gmail.com
sandyskates86@gmail.com
myshoesize11@gmail.com
myshoesize11@yahoo.com

7. Prima facie the physical relations appear to be consensual. These are prima facie observations. The trial Court not to be influenced by these observations. Considering that the charge-sheet is filed and the investigation is complete and in view of the aforesaid assurances, as the applicant is in custody for more than a year and four months with the possibility of the trial concluding any time soon appearing to be distant, I am inclined to enlarge the applicant on bail. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant-Sandeep Subedar Tiwari in connection with C.R. No.783 of 2022 registered with D. N. Nagar Police Station 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 to abide by the statements/conditions mentioned in the order.

8. The bail application is disposed of.

(M. S. KARNIK, J.)