



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

BAIL APPLICATION NO. 1188 OF 2024

YOGESH UTTAM THORAT .. APPLICANT
VS.
THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Mr.Satyam H. Nimbalkar i/b Mr.Abhishek U. Arote a/w
Mr.Arun K. Chavan, Mr.Harshwardhan Pawar, for the
applicant.
Mr. S. H. Yadav, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : APRIL 5, 2024

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.
2. This is a second application for bail in respect of the offence punishable under Sections 363, 376(2)(n) of the Indian Penal Code, 1860 and under section 5 (n)(l)(j)(ii) of the Protection of Children from Sexual Offences Act, 2012 registered vide C.R. No. 279 of 2022 with Rabale Police Station.
3. The application is vehemently opposed by learned

APP.

4. The applicant is the cousin uncle of the victim. The victim was on visiting terms with the applicant. The victim alleged that at the relevant time she was 17 years and 8 months and 17 years and 10 months. The applicant committed the act which is an offence under the aforesaid sections. Considering the age of the victim, consent cannot be a factor for consideration towards grant of bail. Learned APP submitted that even the DNA report concludes the victim and the applicant to be the biological parents of left femur bone of fetus of the victim.

5. It is submitted that the trial has commenced and the deposition of the victim has been recorded. It is pertinent to mention that the applicant had earlier filed an application for bail being Bail Application No. 2034 of 2023. The application was allowed to be withdrawn vide the following order.

“1. Learned counsel for the applicant, on instructions, seeks leave to withdraw the present application with liberty to apply after 6 months.

2. Learned trial Judge is requested to record the evidence of the child witness in terms of mandate of Section 35(1) of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) expeditiously.

3. The application is allowed to be withdrawn with liberty to apply for bail after the evidence of the child witness is recorded in terms of Section 35(1) of the POCSO Act or after the period of 6 months, whichever is earlier. “

6. The deposition of the victim who is now a major has been recorded. Since the deposition of the victim is recorded, learned counsel for the respondent no.2 left it to this Court to pass appropriate orders. In such circumstances, now there is no question of tampering with the evidence as material witness has been examined. The applicant was arrested on 27/06/2022 and in a pre-trial custody since then. The applicant need not be incarcerated by way of a pre-trial punishment. The applicant does not appear to be a flight risk and has roots in the Society. The trial is likely to take some time. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Yogesh Uttam Thorat in connection with C.R. No. 279 of 2022 registered with Rabale 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.

7. The application is disposed of.

(M. S. KARNIK, J.)