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

BAIL APPLICATION NO.1392 OF 2024

JAKIR GULAM JILNI KHAN @ JAKIR KHAN ..APPLICANT
VS.

THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Adv. Neetu Singh for the applicant.
Smt. Sangeeta D. Shinde, APP for the State.
Adv. Ruchi Singh for respondent No.2.

CORAM : M. S. KARNIK

DATE : 6 MAY, 2024

P.C. :

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for respondent No.2.
2. This is an application for bail in respect of the offence punishable under Sections 376(2)(i), 354, 354(A)(D), 500, 506 of the Indian Penal Code, 1860 (hereafter 'IPC' for short), under Sections 4, 8, 12 of the Protection of Children from Sexual Offences Act, 2012 (hereafter "POCSO Act", for short) and under Section 66-B of the Information Technology Act, 2000 registered on 31.08.2022 vide C.R. No.605 of 2022 with Sahar Police Station.

3. The previous Bail Application No.484 of 2023 filed by the applicant was allowed to be withdrawn by an order dated 03.11.2023. The order dated 03.11.2023 reads thus :-

"1. Learned counsel for the applicant, on instructions, seeks leave to withdraw the present application with liberty to approach this Court after three months afresh.

2. The applicant was arrested on 24/09/2022. Learned trial Court is requested to record the evidence of the child witness expeditiously in terms of the mandate of Section 35(1) of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) within a period of 3 months from the date when this order is placed before the trial Court for its consideration.

3. The application is allowed to be withdrawn with liberty as prayed for or after the evidence of the child witness is recorded in terms of the mandate of Section 35(1) of the POCSO Act, whichever is earlier.

4. The bail application is disposed of in the above terms.

5. I appreciate the valuable assistance rendered by Adv. Priyanka H. Chavan, who appeared on behalf of respondent No.2 in this proceeding. The engagement of Adv. Priyanka H. Chavan be regularised."

4. In terms of the aforesaid order the evidence of the child witness was recorded.

5. Learned counsel for the applicant urged that from the evidence of the child witness it clearly demonstrate that the charges against him will not stand before the trial Court. It is not possible for me to express any opinion in this regard as the trial is proceeding.

6. Learned counsel for the applicant then submitted that an affidavit has been filed by the complainant i.e. the mother of the victim that she has no objection if the applicant-accused is released on bail. It is further submitted that in the affidavit it is stated that due to misunderstanding a complaint was registered against the applicant.

7. Learned APP while opposing the application for bail submitted that the victim is a minor and therefore her consent is immaterial. It is further submitted that filing of such affidavit amounts to tampering with the child witness.

8. The applicant was arrested on 24.09.2022. The applicant was 20 years of age at the time of incident. The deposition of the child witness has been recorded. Therefore, there is no question of now tampering with the child witness. The trial is not likely to conclude soon as it is under the orders of this Court the evidence of the child witness is recorded. Continuation of the custody of the applicant in the facts and circumstances of the present case will amount to a pre-trial punishment. In the facts and

circumstances of the present case I am inclined to enlarge the applicant on bail. The applicant has no criminal antecedents to his discredit. There is nothing on record to indicate that the applicant will avoid attending the trial Court. The investigation is complete. The charge-sheet has been filed. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Jakir Gulam Jilni Khan @ Jakir Khan in connection with C.R. No.605 of 2022 registered with Sahar 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) Except for attending the trial, the applicant shall not enter the area of Andheri East, Mumbai after being released on bail, till the trial concludes.

(g) The applicant shall not establish any contact with the complainant, victim or any of the witness during the pendency of the trial.

(h) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

9. The bail application is disposed of.

(M. S. KARNIK, J.)