



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

BAIL APPLICATION NO. 1759 OF 2023

NITIN AABASO JOSHI

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Adv. Kedar J. Patil a/w Adv. Sakshi Kadam and Adv. Pratik
Tare for the Applicant.

Adv. Onkar Wable for Respondent No.2.

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

PSI Sarkte, MRA Marg Police Station.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 15, 2024

P.C. :

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

2. This is the second application for bail in respect of the
offence punishable under Section 363 and 376 of the Indian
Penal Code and Sections 4 and 8 of the Protection of
Children from Sexual Offences Act, 2012, registered vide
First Information Report (FIR) No.9 of 2021 with MRA Marg
Police Station.

3. The applicant was arrested on 22/01/2021. The

applicant had filed an application for bail vide Bail Application No. 1984 of 2021 in this Court. By order dated 24/11/2022, the application was withdrawn with liberty to file a fresh application after 6 months if there is no progress in the trial. It is the prosecution's case that sometime in the year 2017, the applicant who was married, sent a friend request to the minor victim. Thereafter, the applicant met the victim on few occasions. Sometime in the year 2021, prior to the date of the applicant's arrest, i.e. on 17/01/2021, the applicant called the victim and asked her to come near Mumbai CSMT. The applicant and the victim travelled to Karad on 18/01/2021. Thereafter, the applicant took the victim to one of his friend's house. On the next date, the applicant took the victim on a motorcycle to one hotel where he had forcible sexual intercourse with her. On the basis of the missing complaint made by the victim's mother, the applicant came to be arrested.

4. Learned counsel for the applicant submitted that the victim at the relevant time was 17 years of age and hence, the victim was of an age of understanding. It is submitted

that the relationship between the applicant and the victim was consensual in nature. However, considering the age of the victim her consent is immaterial as she was a minor and the applicant was a married man.

5. Learned APP as well as learned counsel for respondent No.2 while opposing the present application submitted that the applicant is not cooperating with the trial Court and hence, the charge could not be framed. Factually, the charge is yet to be framed.

6. The investigation is complete and the charge-sheet is filed. Even after framing of the charge, the trial is likely to take some time to conclude as it is submitted that 16 witnesses are to be examined. After the earlier application for bail was withdrawn on 24/11/2022, there is no progress in the trial. No doubt that the applicant had on 1 or 2 occasions sought adjournment when the trial Court was inclined to frame the charge, on the ground that the bail application is pending. However, factually the applicant is now in custody for more than 3 years awaiting trial to conclude. It is not as if the applicant is wholly responsible

for protracting the trial. Learned counsel for the applicant, on instructions, submits that the applicant will not enter Mumbai /Mumbai Suburban district till the trial concludes except for the purpose of attending the trial. The statement is accepted. The applicant is not a flight risk. Any further incarceration will only be by way of a pre-trial punishment. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Nitin Aabaso Joshi in connection with C.R. No. 9 of 2021 registered with MRA Marg 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) Except for attending the trial, the applicant shall not enter Mumbai/Mumbai Suburban District after being released on bail, till the trial concludes.

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

7. The application is disposed of.

8. I appreciate the valuable assistance rendered by Advocate Onkar Wable who appeared on behalf of respondent No.2 in this proceeding. His engagement may be regularized by the Maharashtra State Legal Services Authority if he is on the panel or else he may be paid fees/honorarium quantified at Rs.5000/-.

(M. S. KARNIK, J.)