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

BAIL APPLICATION NO. 2373 OF 2023

Manohar Tukaram Mhatre @ Ajay ...Applicant
Versus
The State of Maharashtra and anr. ...Respondents

Ms. Anjali Patil, for the Applicant.
Mr. Tanveer Khan, APP for the State/Respondent No.1.
Ms. Vrushali Raje, for Respondent No.2.
PSI A. Y. Kamble, Meghwadi Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 2nd APRIL, 2024

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.
2. The applicant, who is arraigned in CR No.336 of 2021 registered with Meghwadi Police Station, for the offences punishable under Sections 354, 354A, 354C, 354D and 506(2) of the Indian Penal Code, 1860 ("the Penal Code"), Sections 12 and 14 of the Protection of Children from Sexual Offences Act, 2012 ("the POCSO") and Sections 66E and 67B of the Information Technology Act, 2000, has preferred this application to enlarge him on bail.

3. The first informant, the mother of the then 10 year old child – victim, lodged the report with the allegations that the victim was using a mobile phone with sim card No.xxxxxx. On 25th August, 2021 while the first informant was checking the WhatsApp in the mobile phone of the victim, she found that the victim had WhatsApp chat with another mobile phone No.7507779100, which was saved in the name of, “Sunny”. The first informant opened the WhatsApp chat. She found that the victim had sent her nude photos and videos on the said number. The victim had also received obscene messages and content from the said number. It further transpired that the victim had saved another No.9657530100 with the name, “Sunny”. There was chat between the victim and the said person with explicit sexual overtone. The victim had sent her nude photos and videos. Sexually explicit videos were also received by the victim. The first informant took the victim into confidence. Thereupon the victim narrated that the person named, “Sunny” called her on SnapChat and asked her to send the photos and videos as directed lest he would kill her parents.

4. During the course of investigation, it transpired that both the numbers were standing in the name of the applicant. The applicant had asked the victim to send the photos and videos

and had also forwarded obscene messages and content to the victim. The applicant came to be arrested on 28th August, 2021.

5. The first application preferred by the applicant came to be dismissed as withdrawn on 28th April, 2023. The Court had passed the following order:

“1. Learned Counsel for the Applicant after arguing the matter at length and when this Court expressed disinclination to grant relief, sought leave to withdraw the applicant. Leave is granted.

2. The application is dismissed as withdrawn.”

6. Ms. Anjali Patil, the learned Counsel for the applicant, submitted that there is no material to establish the nexus between the applicant and the alleged offences. Inviting the attention of the Court to the transcript of the alleged WhatsApp chat between the applicant and the victim, an endeavour was made to urge that the victim had in fact asked the applicant to send those contents. In any event, the applicant has been in custody since 28th August, 2021. Therefore, having regard to the punishment which offences under Sections 354, 354A and 354C entail, the applicant deserves to be enlarged on bail as the applicant has already undergone almost half of the maximum punishment prescribed under the major offence.

7. Mr. Khan, the learned APP for the State, resisted the prayer for bail. It was submitted that there is a strong *prima facie* case against the applicant.

8. Ms. Vrushali Raje, the learned Counsel for respondent No.2, also strongly opposed the prayer for bail. It was submitted that a 10 year old child was exploited by giving threats of killing her parents. Therefore, the submission based on the alleged initiative from the victim cannot be countenanced.

9. First and foremost, it must be noted that this Court had considered the prayer for bail on merits and expressed its disinclination to grant the relief. Thereupon the application came to be withdrawn.

10. Nonetheless, I have considered the material on record. The fact that the victim was a 10 year old child cannot be lost sight of. In the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973 ("the Code") the victim has clearly stated that the person had asked her to take the videos while bathing and forward the same. When she refused, the said person threatened to kill her parents. The transcript of the conversation on WhatsApp between the victim and the applicant cannot be read in such manner as if the victim is an adult and a case of consensual relationship is sought to be

pressed into service. The Court needs to be sensitive to the trauma the victim might have faced when she was made to act in an particular manner putting her in fear of killing her parents. On merits, therefore, there is no reason to take a different view of the matter.

11. Undoubtedly, the period of incarceration of the applicant deserves to be taken into account. The applicant has been in custody since 28th August, 2021. At the same time, the fact that the applicant is also arraigned for the offence punishable under Section 14 of the POCSO Act, 2012, which entails punishment, which shall not be less than five years, also deserves to be kept in view.

12. Having regard to the nature of the accusation and the material on record, it would be expedient to direct the learned Special Judge to conclude the trial in the Special Case as expeditiously as possible as by an order dated 9th November, 2023 this Court had directed the learned Special Judge to frame the charge and commence the trial as expeditiously as possible and, in any event, to record the statement of the victim within two months. In the event, the trial is not concluded within the stipulated period, the prayer for bail can then be considered on

the ground of prolonged period of incarceration. I am, therefore, not inclined to grant bail, at this stage.

13. Hence the following order:

: O R D E R :

- (i) Application stands rejected.
- (ii) The learned Special Judge, seized with Special Case No.430 of 2021 arising out of CR No.336 of 2021 registered with Meghwadi Police Station, is requested to make an endeavour to commence and conclude the trial as expeditiously as possible and, preferably, within a period of four months from the date of the communication of this order.
- (iii) The prosecution and the applicant shall cooperate in the expeditious conclusion of the trial and shall not seek adjournment.
- (iv) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

[N. J. JAMADAR, J.]