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

**BAIL APPLICATION NO.2557 OF 2023
(THROUGH JAIL)**

BALAKRAM HETRAM SAGAR

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Saurabh K. Raut (appointed through Legal Aid) for the
applicant.

Mr. Balraj B. Kulkarni, APP for the State.

Adv. Mrunal A. Bhide for the victim.

CORAM : M. S. KARNIK, J.

DATE : APRIL 24, 2024.

P.C. :

1. Heard learned counsel for the applicant appointed through Legal Aid, learned APP for the State and learned counsel appointed on behalf of the victim.

2. This is an application for bail in respect of the offence punishable under Sections 376, 506 of the Indian Penal Code (hereafter 'IPC' for short) and under Sections 4, 6, 8, 12 of the Protection of Children from Sexual Offences Act, 2012 (hereafter "POCSO Act", for short) registered on 21.05.2019 vide C.R. No.229 of 2019 with Bhiwandi Taluka Police Station.

3. The applicant had also filed earlier Bail Application No.3287 of 2021 which came to be withdrawn on 04.01.2023. The order dated 04.01.2023 reads thus :-

- "1. Learned counsel for the applicant seeks leave to withdraw this application. However, he requests that as the applicant is in custody for more than 3 years, the trial may be expedited.
2. The application is allowed to be withdrawn.
3. The request is reasonable. Considering that the applicant is in custody for more than 3 years, the trial Court is requested to expedite the trial. If there is no progress made within next six months in the trial, liberty to apply afresh.
4. The application is disposed of.
5. The interim application is also disposed of."

4. Thereafter, the applicant filed two bail applications. One through jail, the other one through an advocate engaged by him. As this bail application which is filed through jail was pending, the bail application preferred by the applicant being Bail Application No.484 of 2024 was withdrawn on instructions.

5. The prosecution case is that the victim who at the relevant time was 16 years of age was upset because her step-father and brother had scolded her. A day prior to the registration of the FIR, she left the house at night. It is alleged that the applicant took the victim to his house at

night on the pretext of giving her shelter. It is alleged that the applicant committed an act which is an offence under the aforesaid sections.

6. Learned APP as well as learned counsel for the victim invited my attention to the materials on record. It is submitted that the accusations are serious in nature and there are ample materials, *prima facie*, to demonstrate that it is the applicant who is the perpetrator of the crime. My attention is also invited to the statement of the applicant's wife who says that the applicant expressed remorse for his deeds after the victim identified him.

7. No doubt, the accusations are serious. The applicant will face the consequences post trial if he is found guilty. It needs to be noted that the applicant was arrested on 21.05.2019 and is now in pre-trial custody almost for a period of four years and eleven months. Undoubtedly, the gravity of the offence was one of the factor which weighed with me and while considering whether to release the applicant on bail or otherwise.

8. So far as the trial is concerned, I am informed that

the charge has been framed. However, the witnesses are yet to be examined. There are as many as 23 witnesses the prosecution proposes to examine. Learned APP submitted that it is not as if all the witnesses will be examined and the number may be less. Considering the workload on the trial Court, I do not propose to accept the plea of the learned APP and learned counsel for the victim that the trial be expedited by making it time bound.

9. On instructions, learned APP submitted that the victim is presently residing in Uttar Pradesh. I am inclined to enlarge the applicant on bail in view of the aforesaid length of custody undergone as an undertrial prisoner with no possibility of the trial concluding any time soon. It is unlikely that the applicant will tamper with the prosecution witnesses. In any case, I propose to impose stringent conditions while enlarging the applicant on bail to allay any apprehension on the part of the victim. The investigation is complete. The charge-sheet is filed. There are no criminal antecedents reported against the applicant. The applicant does not appear to be a flight risk. Hence, the following

order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Balakram Hetram Sagar in connection with C.R. No.229 of 2019 registered with Bhiwandi Taluka Police Station shall be released on bail on his furnishing P.R. Bond of Rs.15,000/- with one or more local 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 attend the Investigating Officer of Bhiwandi Taluka Police Station twice a month on the first and third Monday of every month between 11:00 a.m. to 1:00 p.m.
- (e) 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.
- (f) 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.

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

(h) The applicant shall not leave the State of Maharashtra without permission of the trial Court.

10. The bail application is disposed of.

11. I appreciate the valuable assistance rendered by Advocate Saurabh K. Raut, who appeared on behalf of the applicant through Legal Aid. I also appreciate the valuable assistance rendered by Advocate Mrunal Bhide, who appeared on behalf of the victim at my request. Her engagement be regularized by the Maharashtra State Legal Services Authority. They be paid the fees/honorarium as prescribed.

12. Needless to mention that the observations are limited for deciding this application for bail. The trial Court shall obviously proceed with the trial on its own merits and in accordance with law and shall not be influenced by any of the observations made in this order.

13. This order be communicated by the Registry as well as the Investigating Officer to the applicant through the jail superintendent.

(M. S. KARNIK, J.)