



Diksha Rane

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

BAIL APPLICATION NO.2731 OF 2023

NIHAL SAYYED @ NIHAL TAYANOOR SAYYED ..APPLICANT
VS.

THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Adv. Anjali Patil a/w. Adv. Tohid Shaikh for the applicant.

Mr. S. H. Yadav, APP for the State.

Adv. Wajid Shaikh a/w. Adv. Sabre Alam for the respondent
no.2.

PI Khaire, D. N. Nagar Police Station.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 2, 2024

P.C. :

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

2. This is the second bail application. The earlier bail
application was disposed of on 19/12/2022 vide the
following order:-

1. Heard learned counsel for the applicant, learned APP
for the State and learned counsel for the complainant.

2. Learned counsel for the applicant seeks leave to
withdraw this application with liberty to file fresh application
after six months.

3. The application is allowed to be withdrawn and
disposed of accordingly.

4. The applicant is in custody for more than one year and
three months. Liberty to file fresh application after six (6)
months if the trial does not progress substantially.

5. I express my gratitude for the able assistance rendered by the advocate representing the complainant."

3. The applicant was arrested on 12/9/2021 for the offences punishable under Sections 376, 328, 504, 506 read with 34 of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 4, 8, 12 Protection of Children from Sexual Offences Act, 2012 (hereafter "POCSO Act", for short) registered on 12/9/2021 vide C.R. No.642/2021 with D. N. Nagar Police Station.

4. At the relevant time, the applicant was 19 years of age. The applicant is now in custody for more than two years and four months. I am informed that even the charge has not been framed. Even after one year of the passing of the order dated 19/12/2022 by this Court, there is no progress in the trial.

5. I have perused the First Information Report (FIR).

6. Learned APP for the State and learned counsel for the respondent no.2 vehemently opposed the application for bail. It is submission by them that at the relevant time, the victim was 15 years of age. The applicant was responsible for encouraging the victim to take drugs, took advantage of

her condition as a result of consumption of drugs and on the promise that the applicant will marry the victim, the applicant had relationship with the victim which constitutes the offence under the aforesaid sections. It is the allegation that even the mother and sister of the applicant were involved in the offence with the present applicant. The mother and sister have been granted pre-arrest bail.

7. The accusations, no doubt, are serious. Though there is a delay in lodging of the FIR, the explanation given by the victim is that she was admitted in the Rehabilitation Centre for de-addiction treatment.

8. *Prima facie*, on a reading of the FIR, the possibility of a consensual relationship between the parties cannot be ruled out. However, considering the age of the victim, the consent is immaterial. Learned counsel for the applicant submitted that even the applicant at the relevant time was between 18 to 19 years of age and it is his case that such romantic relationship should not be criminalized.

9. Looking at the age of the applicant and considering that he has already been in pre-trial custody for more than two years and four months with the possibility of the trial

concluding any time soon appearing to be remote as even the charge has not been framed, I am inclined to enlarge the applicant on bail by imposing stringent conditions. As indicated earlier, even after passing of the earlier order there has been no progress in the trial.

10. Learned counsel for the applicant, on instructions of the applicant's mother, father and sister who are personally present in the Court, makes a statement that the applicant is willing to reside outside the jurisdiction of Mumbai/ Mumbai Suburban District till the trial concludes. Statement is accepted.

11. It is the submission of learned counsel for the victim that the applicant's mother and sister are threatening her. Learned counsel for the applicant, on instructions of the mother and sister of the applicant who are present in the Court submits that even the mother and sister of the applicant will reside outside Mumbai and Mumbai Suburban District. Statement accepted.

12. Liberty to apply for modification of the condition on behalf of the mother and sister of the applicant after a period of one year from today. Such application may be

preferred before the trial Court.

13. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported against the applicant. In my opinion, the applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Nihal Sayyed @ Nihal Tayanoor Sayyed in connection with C.R. No.642/2021 with D. N. Nagar Police Station, shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- 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. 25,000/- for a period of 6 weeks in lieu of surety.
- (d) The applicant shall attend the Investigating Officer of D. N. Nagar police station once in three months on the 1st Monday between 11.00 a.m. and 1.00 p.m. till further orders of the trial Court, commencing from March, 2024.
- (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) Except for attending the trial and for the purpose of reporting to the Investigating Officer, the applicant shall not

enter Mumbai/Mumbai Suburban District, after being released on bail, till further orders of the trial Court.

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

(i) The applicant shall surrender her passport, if any, to the investigating officer.

(j) Statements which are recorded herein before to be abided by.

(k) It is made clear that in the event if it is found that the applicant is trying to contact, intimidate or threaten the victim or the family members, the same will be viewed seriously and it is always open for the victim or the prosecution to apply for cancellation of bail.

(l) It is also open for the victim to apply to the concerned Court or the Authority for necessary protection which application shall be considered on its own merits and in accordance with law.

14. The application is disposed of.

(M. S. KARNIK, J.)