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

BAIL APPLICATION NO.2979/2023

MIRJUL SALIM MONDAL

..APPLICANT

VS.

THE STATE OF MAHARASHTRA & ANR.

..RESPONDENTS

Adv. Sana Raees Khan a/w. Adv. Aditya Parmar, Adv. Ruchita Rajpurohit, Adv. Abhijeet Singh for the applicant.

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

Adv. Saurabh Pakale for the respondent no.2.

API Nitin Khade, Nerul Police Station, Navi Mumbai.

CORAM : M. S. KARNIK, J.

DATE : MARCH 19, 2024.

P.C. :

1. Heard learned counsel for the applicant. Learned APP for the State and learned counsel for the respondent no.2 appointed by this Court vehemently opposed the application for bail.

2. This is an application for bail in respect of the offence punishable under Sections 376(2)(n), 323, 504, 506 read with 34 of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 4 and 6 of the the Protection of Children from Sexual Offences Act, 2012 ("POCSO", for short) registered on 1/8/2022 vide C.R. No.292/2022 with Nerul

Police Station. The date of the incident is between 3/8/2017 to 22/7/2022.

3. The applicant is the accused no.1. The accused no.2 - 'K' has been enlarged on bail by an order dated 12/9/2023 in Bail Application No.256/2023. The victim who was 15 years old at the relevant time stated in her complaint that she lost her parents when she was three months old. The victim was residing with her grandfather in West Bengal. The co-accused 'K' was known to the victim's grandfather. Eight years prior to the incident, the co-accused 'K' brought the victim along with her to Nerul. It is alleged that the co-accused 'K' was working in a Mall. The co-accused 'K' made the victim to work in the Mall. It is alleged that the co-accused 'K' forced the victim to have sexual relations with the employees working in the Mall. It is then alleged that the victim was made to work in the house of 'K's daughter. The victim alleged that 'K's son-in-law, that is the present applicant, had forcible sexual intercourse with her during the period of four months when she was working in the house of 'K's daughter.

4. Learned counsel for the applicant submitted that the

complaint is filed by the victim at the behest of one Tumpa Dalai who was previously working with 'K'. She submits that Tumpa Dalai had stolen some articles from the shop of the co-accused 'K' and therefore, 'K' had removed her. She also filed a complaint against Tumpa Dalai. Tumpa Dalai had a grudge against co-accused 'K'. My attention is invited to the materials on record to submit that the victim was in contact with Tumpa Dalai and that it is she who helped the victim to lodge the First Information Report (FIR). It is the contention of learned APP as well as learned counsel for the respondent no.2 that said Tumpa Dalai was only helping the victim to file a complaint to give her justice as a result of the harassment the victim suffered at the hands of 'K' and the present applicant. It is the submission of learned counsel for the respondent no.2 that the prosecution ought to have added the charge under Section 376(3) of the IPC. This aspect can always be taken into consideration by the trial Court.

5. It is then contended by learned counsel for the applicant that the victim refused to undergo medical examination. It is submitted that the complaint, so far as

against the present applicant is concerned, is completely lacking in material particulars whatsoever except for vague and general allegation that during the period when the victim was working with the present applicant, the present applicant committed the aforesaid offence when his wife had gone out for work. I have carefully perused the statement of the victim. The applicant was arrested on 5/8/2022 and now is in custody for more than one and half years. The trial is unlikely to conclude soon. The charge is yet to be framed. There are no criminal antecedents reported against the present applicant. In the facts and circumstances of the present case, I am inclined to enlarge the applicant on bail. The applicant will face the consequences if found guilty. The victim is at present in Child Care Home. There is no likelihood of tampering with the evidence. The investigation is complete. The charge-sheet has been filed. The applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant- Mirjul Salim Mondal in connection with C.R. No. 294/2022 registered with Nerul 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 shall attend the Investigating Officer of Nerul police station once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m. till the trial concludes.

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

(g) The applicant shall surrender his passport to the investigating officer.

(h) The victim, at present is residing at Child Care Home, Kharghar. The applicant shall not make any attempt to contact or exert pressure on her. If it is found that the applicant is violating any conditions or trying to contact the victim, it is open for the prosecution to apply for cancellation of bail.

6. The application is disposed of.

7. I appreciate the valuable assistance rendered by Advocate Saurabh Pakale, who appeared on behalf of respondent No.2 in this proceeding. His engagement be regularized by the Maharashtra State Legal Services Authority.

(M. S. KARNIK, J.)