

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

CRIMINAL BAIL APPLICATION NO. 203 OF 2024

Mohammad Nisad Jamaruddin Ali ...Applicant

Vs.

The State of Maharashtra and Others ...Respondents

Ms. Sana Shaikh with Maya S. Updeshe, Mr. Pratik T., with Ms. Nisha Lakariya, Advocate for Applicant.

Ms. S. M. Yadav, APP for State-Respondent.

Mr. Aliabbas Dolhiwala, with Mr. H. M. Fatahi, Advocate for Respondent No. 2.

CORAM:- ANIL S. KILOR, J.

DATED:- 13th DECEMBER, 2024

PC:-

- 1) Heard.
- 2) By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No. 39 of 2023 registered with Kamote Police Station, Raigad for the offences punishable under Sections 366, 370-A (1), 372 of the Indian Penal Code, 1860, Sections 4, 16, 17 and 18 of the Protection of Children from Sexual Offences Act, 2012 and Sections 4 and 5 of the Immoral Traffic (Prevention) Act, 1956.

3) Having gone through the charge-sheet and the relevant material collected by the Investigating Officer during the investigation, it is evident that the provisions of the POCSO Act, 2012 made applicable on the basis of the date of birth noted in the Aadhar Card of the victim. Whereas, the statement of the mother specifically states that there is no birth entry taken in any Government record. The medical documents show that the age of the victim is between 18-19 years.

4) In the circumstances, in absence of any birth certificate or any admissible evidence as regards the age proof, the date of birth recorded on Aadhar Card cannot be relied upon to deny the bail to the applicant just because the offence is registered under the provisions of POCSO Act.

5) The statement of the victim shows that she was not forced by the applicant to get engaged in commercial sexual activity but she states that she was in need of money and she on her own had chosen to do the said activity.

6) In the circumstances, I am of the opinion that since the charge-sheet has been filed, further custody of the applicant is not required. Accordingly, though the learned Counsel for respondent No. 2 and the learned APP strongly opposed the application, I pass the following order.

ORDER

i The Bail Application is allowed;

ii It is directed that the Applicant shall be released on bail in Crime No. 39 of 2023 registered with Kamote Police Station, Raigad for the offences punishable under Sections 366, 370-A (1), 372 of the Indian Penal Code, 1860, Sections 4, 16, 17 and 18 of the Protection of Children from Sexual Offences Act, 2012

and Sections 4 and 5 of the Immoral Traffic (Prevention) Act, 1956, on furnishing P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand) with one solvent surety in the like amount;

iii The applicant shall attend the said Police Station on 1st day of every month between 10.00 am to 11.00 am, till the conclusion of the trial except on the date of trial;

iv. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;

v. Liberty is granted to the State to apply cancellation of bail if the applicant commits similar offence.;

vi. The Applicant shall attend the trial before the Trial Court regularly on every date unless exempted by the Trial Court for any reason.

vii. Application stands disposed of, accordingly.

[ANIL S. KILOR, J.]