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

BAIL APPLICATION NO.761 OF 2024

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VAIBHAV RAMESH
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Shubham Pralhad Gupta ... Applicant

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr. Shivam J. Singh with Birendra Yadav i/by Mr. A. Gupta for the applicant.

Ms. Shilpa G. Talhar, APP for the State.

Ms. Komal Sinha for respondent No.2 (Appointed as Legal Aid Counsel)

Mr. Salvi, PSI, Dahisar Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 17, 2025

P.C.:

1. The present application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking his release on regular bail in connection with Crime No. 756 of 2023, registered at Dahisar Police Station, for offences punishable under Sections 376(2)(i)(n) of the Indian Penal Code, 1860, and under Sections 4, 6, 8, and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. As per the case of the prosecution, on 18th August 2023, the informant returned home from work in the evening and noticed that her minor daughter (the victim) was in possession of ₹1,000/-. Upon being questioned about the source of the money,

the victim initially remained silent and did not provide any explanation. The informant then informed her husband about the same. However, even on the next day, the victim did not disclose the source of the money. On 20th August 2023, the informant requested her neighbour and one of the victim's friends to speak to the victim and inquire into the matter.

3. It is the case of the prosecution that when the neighbour and the friend of the victim questioned her, the victim revealed that one Shubham Gupta, who is their neighbour, had given her the said money and had expressed that he was in love with her. The victim further disclosed that the said Shubham Gupta had committed forcible sexual intercourse with her on two occasions. On 22nd August 2023, after the informant returned home from work, she was informed by the neighbour and the friend about what the victim had told them. Upon learning these facts, the informant took her daughter into confidence and again inquired with her. The victim then told her mother that about two months earlier, the accused had expressed his affection for her and had given her ₹1,000/-. She also stated that in the first week of July, at around 8:30 a.m., the accused had called her to the house of his friend Vivek when nobody else was present and had committed forcible sexual intercourse with her. She further informed that about ten days prior, he had again called her to the same place and repeated the act. Based on this disclosure, the First Information Report (FIR) came to be lodged against the present applicant.

4. The learned advocate for the applicant submitted that the applicant had only recently attained the age of majority in June

2023, whereas the alleged incidents are said to have taken place in August 2023. It was argued that there are several material contradictions between the victim's statement recorded under Section 161 of the CrPC and her statement under Section 164 of the CrPC. It was also pointed out that the victim had referred to a video in her statement under Section 164, which, according to her, played a role in her interaction with the applicant, but such video has not been recovered by the Investigating Officer. It was further submitted that the applicant has been in custody since 23rd August 2023 and that the medical evidence does not support the case of the prosecution. Additionally, the charges in the case are yet to be framed. Therefore, the applicant prays for his release on bail, subject to suitable conditions.

5. On the other hand, the learned APP, assisted by the learned advocate appointed to represent the victim, strongly opposed the bail application. They submitted that there is consistency in the victim's statements recorded under Sections 161 and 164 of the CrPC and that her version inspires confidence. It was further submitted that the medical examination conducted supports the allegations made by the victim. It was also argued that the victim, at the time of the first incident, was below 12 years of age, which attracts the stringent provisions of the POCSO Act. In these circumstances, it was submitted that no case is made out for grant of bail and that the application deserves to be rejected.

6. I have carefully considered the submissions advanced by the learned counsel for the applicant, the learned APP, and the learned advocate appointed for the victim. I have also gone through the

material placed on record, including the FIR, the statements of the victim recorded under Sections 161 and 164 of the Code of Criminal Procedure, and the medical report.

7. Prima facie, it appears that the applicant had recently attained majority in June 2023, and the alleged incidents are stated to have occurred thereafter. The proximity of the applicant's age to the threshold of majority is a relevant factor, especially in light of the nature of allegations and the relationship between the parties. Although the prosecution has alleged that the victim is a child under 12 years, the defence has brought on record discrepancies in the statements of the victim, particularly in relation to the alleged video and the sequence of events. It is also not disputed that the said video, which is alleged to be a material piece of evidence, has not been recovered.

8. Further, upon perusal of the medical report, it is observed that there are no injuries found on the body of the victim that conclusively support the prosecution version of forcible intercourse. While the absence of injuries cannot by itself be a ground to discard the victim's version, in the facts of the present case, it assumes significance in the context of the overall evidence and the stage of the case. The charges are yet to be framed and trial is not likely to commence immediately. The applicant has already been in custody since 23rd August 2023. Investigation is complete and charge-sheet has been filed.

9. This Court is mindful of the seriousness of the allegations and the sensitivity involved in offences under the POCSO Act.

However, it is also well-settled that pre-trial incarceration must not become a punishment, especially when the guilt of the accused is yet to be established through due process of law. The object of bail is to secure the presence of the accused during the trial, and not to detain him indefinitely when his custody is not essential for further investigation.

10. Taking into account the overall facts and circumstances of the case, including the age of the applicant, nature of allegations, absence of material corroboration in medical evidence, and the fact that trial may take time, I am of the considered opinion that the applicant is entitled to be released on bail, subject to stringent conditions to ensure that he does not tamper with evidence or influence witnesses.

11. Hence, the following order is passed.

- i) The bail application is allowed;
- ii) The applicant Shubham Pralhad Gupta is directed to be released on regular bail in connection with Crime No. 756 of 2023 registered with Dahisar Police Station for offences punishable under Sections 376(2)(i)(n) of the Indian Penal Code, 1860, and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, upon furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or more solvent sureties in the like amount, to the satisfaction of the Trial Court, subject to the following conditions:

- a) The applicant shall not, in any manner, contact the victim or her family members, directly or indirectly.
 - b) The applicant shall not enter the building where the victim resides.
 - c) The applicant shall report the Dahisar Police Station on first Monday of every month between 10.00 a.m. to 12.00 noon, until further orders.
 - d) The applicant shall not tamper with the evidence or attempt to influence any witness.
 - e) The applicant shall appear before the Trial Court on every date of hearing unless prevented by sufficient cause.
 - f) The applicant shall not leave the territorial jurisdiction of the Trial Court without prior permission.
 - g) The applicant shall not indulge in any criminal activity during the pendency of the trial.
 - h) Any breach of these conditions shall result in the prosecution moving for cancellation of bail before the Trial Court.
4. The bail application is allowed and disposed of.

(AMIT BORKAR, J.)