

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1263 OF 2024

Hriday Vinodkumar Gupta

.. Applicant

Versus

The State of Maharashtra & Ors.

.. Respondents

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- Mr. Prabhakar B. Dave for Applicant
- Mr. Sukanta A. Karmakar, APP for State
- Mr. Rutvij Solanki, Advocate (appointed) for Respondent Nos. 2 to 4

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 13, 2025

P. C.:

1. Heard Mr. Dave, learned Advocate for Applicant; Mr. Karmakar, learned APP for State and Mr. Solanki, learned Advocate (appointed) for Respondent Nos. 2 to 4.

2. Applicant - accused No. 2 has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.P.C.**") in connection with Crime No. 211/2023 registered with Mira Road Police Station under Sections 366(A), 370(1), 370(3), 370(4) and 372 of the Indian Penal Code, 1860 (for short, "**IPC**"); Sections 4 & 5 of Immoral Traffic (Prevention) Act 1956 and Sections 16, 17 and 18 of the Protection of Child from Sexual Offences Act, 2012 (for short, "**POCSO**").

3. Accused No. 1 is a 16 year old girl. *Prima facie* according to the prosecution case, a trap was set up by the prosecution to apprehend accused No. 1 on receipt of certain discreet information about the activities carried out by her of providing victims rather young age victims for solicitation purposes. Prosecution set up a trap by directing a bogus customer to interact with accused No. 1 to which she responded by WhatsApp, the chats which are appended to the chargesheet. Accused No. 1 was apprehended along with three victims on 01.06.2023 in the area called “Shivam Garden” in Mira Road. The three victims who were apprehended along with accused No. 1 are 22 years old, 26 years old and 15 years old. *Prima facie*, it is seen that accused No. 1 herself is also considered to be a minor since she is below 18 years of age. She is tried by the Juvenile Court, however at page No. 19, there is an order of the Juvenile Court having released accused No. 1 on bail.

4. Indictment of the present Applicant is solely based on the statement made by one of the victims namely the 22 year old victim girl who was apprehended along with accused No. 1. The said statement is placed before me by the learned APP. On reading of the said statement, it is *prima facie* apparent that the issue relating to the present crime and the prosecution case *qua* the accused No. 1 in the present crime has no nexus with the statement made therein. If at all,

it would be the subject matter of a fresh cause of action / crime if a complaint is made. She has stated that she knew accused No. 2 and at his behest and in conjunction with him, she would indulge in solicitation activities and proceeds thereof would be equally divided by both of them. *Prima facie* the said statement would give rise to the completely different and separate cause of action. When I put this question to the learned APP as also to the learned Appointed Advocate, though they would submit that there are certain other statements but they would fairly concede the fact that other statements do not show any nexus whatsoever of the Applicant with the present crime in question *qua* the accused No. 2 who is the Applicant before me. Needless to state that if there is any complicity of the Applicant i.e. accused No. 2 in the present crime, same shall be proved and adjudicated by the prosecution at the trial. *Prima facie* consideration of the statements and the aforesaid facts entitle the present Applicant to be released on Bail. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after

his release from jail to the concerned Police Station and also to the trial Court;

- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (v) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and
- (viii) In case of any infraction of the above conditions and /

or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

5. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

6. This Court appreciates the assistance rendered by Mr. Solnaki, learned Advocate appointed through Legal Aid to espouse the cause of Respondent Nos. 2 to 4. Fees be paid by the High Court Legal Aid Services Authority of this Court to the learned appointed Advocate as per rules on production of a server copy of this order.

7. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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by RAVINDRA
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2025.03.13
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