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

BAIL APPLICATION NO.1375 OF 2024

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Bharosh Rambiksh Mukhiya Alias

Bharoshi Mukhiya

... Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Mohammad S. Usmani with Ms. Sakshi Baadkar
i/by Abhishek Kumar for the applicant.

Mr. Sagar R. Agarkar, APP for the State-respondent
No.1.

Mr. Bajrang Desai, PSI, Samta Nagar Police Station is
present.

CORAM : AMIT BORKAR, J.

DATED : JULY 11, 2025

P.C.:

1. Learned advocate appointed to represent the victim is not present.

2. By the present application filed under Section 439 of the Code of Criminal Procedure, 1973, the applicant is seeking regular bail in connection with Crime No.954 of 2022 registered with Samta Nagar Police Station for the offences punishable under Section 354 of the Indian Penal Code, 1860 and Section 9(n) read with Section 10 of the Protection of Children from Sexual Offences Act, 2012 (for short, "POCSO Act").

3. As per the prosecution case, Respondent No.2, aged 35 years, is working as a domestic help and is residing at Satara Camp, near Datta Mandir, Damunagar, Kandivali (East), Mumbai, for the past six years. It is alleged that she resides at the said address along with the applicant, who is her second husband, and her daughter from the previous marriage.

4. Respondent No.2 supports her family by working as a domestic help. Earlier, she was married to one Subhash Morya, with whom she had three children. Due to his alcohol addiction and abusive behaviour, she separated from him and, about eight years ago, married the present applicant – Bharosh Rambiksh Mukhiya. One child is born from the wedlock between the applicant and Respondent No.2.

5. On a regular day, Respondent No.2 leaves for work around 8:30 a.m. and returns at about 8:00 p.m. She works at Singh Estate, Vishnu Shivam Tower, located at Thakur Village, Kandivali (East), Mumbai.

6. On 21st June 2022, when Respondent No.2 returned home from work, she was informed by her neighbours, namely Manjula Tambe and Manisha Tambe, that her husband – the present applicant – had allegedly outraged the modesty of her daughter, i.e., the victim girl. It was further informed that the victim had been taken to Samta Nagar Police Station for lodging a complaint.

7. Upon learning of the incident, Respondent No.2 immediately rushed to the Police Station, where she found that the victim girl was present along with two women, namely Mrs. Sushma Tiwari

and Suchitra Ahire. Respondent No.2 then took her daughter into confidence and made inquiries regarding the incident in question.

8. Learned counsel appearing on behalf of the applicant submitted that the applicant was arrested on 22nd June 2022 and has been in custody since then. It was contended that there are contradictions and inconsistencies in the statements of the victim and other witnesses. However, the primary ground pressed for bail is that the applicant has already undergone custody for more than three years, which is nearly the maximum prescribed sentence for the alleged offence under Section 9(n) of the POCSO Act. It was further submitted that the applicant has voluntarily given an undertaking dated 2nd May 2024, wherein he has stated that upon release on bail, he shall not reside in the vicinity of the victim or the complainant. Based on this assurance, the applicant prays for his release on bail.

9. Per contra, the learned APP opposed the bail application, submitting that the allegations against the applicant are of a grave and serious nature. It was submitted that although there are some inconsistencies in the statements of witnesses, the same are not sufficient to discard the prosecution's case at this stage. It is urged that considering the nature of the offence and the tender age of the victim, no leniency be shown, and the application be rejected.

10. I have carefully considered the submissions made by the learned advocate for the applicant as well as the learned APP for the State. I have also gone through the material placed on record, including the statements of the witnesses and the victim.

11. The FIR discloses that the incident came to light through neighbours and that the complainant, i.e., Respondent No.2, came to know about it only after returning home. It is also noted that the victim was initially taken to the police station by third parties, and her mother (Respondent No.2) subsequently reached there and recorded her version.

12. The learned APP has rightly pointed out certain inconsistencies in the statements of the witnesses, including the victim. However, at this stage, the Court is not expected to go into a detailed appreciation of the evidence or the credibility of witnesses, which is a matter for trial. What is relevant for consideration in the present application is whether continued incarceration of the applicant is necessary during pendency of trial.

13. The applicant is in custody since 22nd June 2022 and has undergone incarceration for more than three years. The maximum punishment prescribed under Section 10 of the POCSO Act, read with Section 9(n), is imprisonment for a term which may extend to five years. Thus, the applicant has already undergone a substantial portion of the maximum possible sentence.

14. It is also relevant to note that the applicant has voluntarily undertaken not to reside in the locality or vicinity of the victim or her family. This undertaking, dated 2nd May 2024, has been placed on record, which can be accepted as a condition for grant of bail.

15. There is nothing on record to show that the applicant has previously misused liberty or that he is likely to tamper with the

evidence or threaten the witnesses. The charge-sheet has already been filed, and further custodial interrogation is not required. The trial is likely to take time. In these circumstances, this Court is of the view that continued detention of the applicant is not warranted.

16. In view of the aforesaid discussion, the application deserves to be allowed. Hence, the following order:

17. The applicant Bharosh Rambiksh Mukhiya Alias Bharoshi Mukhiya is directed to be released on bail in connection with Crime No.954 of 2022, registered at Samta Nagar Police Station for offences punishable under Section 354 of the Indian Penal Code, 1860; and Section 9(n) read with Section 10 of the Protection of Children from Sexual Offences (POCSO) Act, 2012, on executing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one or more sureties in the like amount, 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 locality where the victim resides.
- c) The applicant shall cooperate with the prosecution and attend all trial dates regularly.
- d) The applicant shall report to the Samta Nagar Police Station on the first Monday once every three months between 10:00 a.m. and 12:00 noon, until further orders.
- e) The applicant shall not enter the jurisdiction of the Samta Nagar Police Station, except for the limited purpose of

reporting to Samta Nagar Police Station.

- f) The applicant shall not tamper with evidence or influence any witness.
- g) The applicant shall provide his current residential address and inform the court in case of change of residence.
- h) The applicant shall not commit any offence during the pendency of trial, failing which his bail is liable to be cancelled.

18. The bail application stands disposed of in the aforesaid terms.

(AMIT BORKAR, J.)