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

BAIL APPLICATION NO.1432 OF 2024

VAIBHAV
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Kamleshkumar Omprakash Jambhulkar ... Applicant

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr. Abhishek Kulkarni with Mr. Sagar Wakule for the applicant.

Ms. Rajashree V. Newton, APP for the State-respondent No.1.

Ms. Vilasini Balasubramanian for respondent No.2 (Appointed as Legal Aid Counsel).

Mr. Sunil Sonawane, PSI, Charkop Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 23, 2025

P.C.:

1. This is an application filed under Section 439 of the Criminal Procedure Code, 1973 seeking regular bail in connection with Crime No.4 of 2024. The accused applicant stands charged for offences punishable under Sections 354 (assault or criminal force to woman with intent to outrage her modesty), 509 (word, gesture or act intended to insult the modesty of a woman), and 323 (voluntarily causing hurt) of the Indian Penal Code, 1860. Additionally, the applicant is charged under Sections 8 (sexual assault) and 12 (sexual harassment) of the Protection of Children

from Sexual Offences Act, 2012. The present application seeks release of the accused on bail pending trial of the aforementioned criminal case.

2. The prosecution case, as per the First Information Report and the statements recorded during investigation, is that the victim is a minor girl aged 10 years. The alleged incidents occurred on two separate occasions. The first incident took place on 26th December 2023 at approximately 09:30 p.m. when the victim had gone to the garden area of their residential society. Upon her return to the house, the victim narrated to the complainant, who is her mother, that an unknown person whom she referred to as "uncle" had misbehaved with her and harassed her in the garden premises.

3. The second and more serious incident allegedly occurred on 30th December 2023, again at around 09:30 p.m. On this occasion, the victim returned home in a distressed state, crying and visibly upset. She informed her mother that the same person (the applicant) had caught hold of her, inappropriately touched her chest area, and when she attempted to resist and free herself from his grasp, the applicant physically assaulted her by beating her and also verbally abused her with foul language.

4. Upon hearing these serious allegations, the informant (mother of the victim) asked her daughter to identify the person who had committed these acts. The victim then pointed out and identified the applicant as the perpetrator. Following this identification, the informant initially approached the society members and office bearers of their residential housing society to

lodge a complaint regarding the incident. Subsequently, based on the victim's statement and the gravity of the allegations, the informant filed a formal complaint with the police authorities, which led to the registration of the present crime.

5. The learned advocate appearing for the applicant has advanced several arguments in support of the bail application. Firstly, he submitted that the statements of the prosecution witnesses are purely hearsay in nature and lack direct evidence. He emphasized that the victim herself has not stated in her testimony that any other person was present during the alleged incidents or witnessed the same. Therefore, he argued that there cannot be any independent eyewitnesses to corroborate the victim's version of events, making the prosecution case weak and unreliable.

6. The defence counsel further drew attention to the statement of one Shilpa Gaikwad, a witness, which reveals that she came to know about the incident only on 3rd January 2024 when the mother of the victim informed her about the same. It was only then that she called the applicant and asked for his name in the presence of the victim for identification purposes. The defence strongly emphasized that although the alleged incidents are stated to have occurred on 26th December 2023 and 30th December 2023, the First Information Report was lodged only on 3rd January 2024, thereby showing a significant delay of 7-8 days in reporting the matter to the police authorities.

7. The learned counsel further submitted that there had been some prior dispute or altercation between the parents of the victim

and the applicant, which has motivated the filing of this false and fabricated complaint as an act of revenge or malice. He argued that the applicant has been in custody since his arrest on 3rd January 2024 and considering the nature of the case and the current pendency in courts, it is highly unlikely that the trial proceedings will conclude in the near future.

8. In support of his arguments, the defence counsel relied upon the judgment delivered by the Supreme Court in the case of *Manish Sisodia vs. Directorate of Enforcement* reported in 2024 0 AIR(SC) 4053, wherein the apex court has laid down principles regarding grant of bail in cases involving prolonged incarceration without trial. Based on these legal precedents and the facts of the present case, he submitted that the applicant is entitled to be released on bail as a matter of right.

9. Per contra, the learned Additional Public Prosecutor appearing for the State has vehemently opposed the bail application. She submitted that the victim in the present case is a tender-aged child of merely 10 years, and the nature of the offences alleged against the applicant are extremely serious, involving sexual assault and harassment of a minor child. She emphasized that considering the grave nature of the incidents that allegedly occurred on 26th December 2023 and 30th December 2023, there exists a genuine and reasonable apprehension that if the applicant is released on bail, there is a strong possibility of repetition of similar crimes, particularly given his proximity to the victim.

10. The learned APP further highlighted that the applicant is a resident of the same housing society where the victim and her family reside. This geographical proximity creates a significant risk of the applicant influencing, intimidating, or tampering with the prosecution witnesses, including the victim herself and her family members. She argued that such interference could seriously prejudice the prosecution case and obstruct the course of justice.

11. Addressing the defence argument regarding delay, the learned APP clarified that the victim had indeed disclosed the first incident to her mother on 26th December 2023 itself. However, the mother initially did not take the matter seriously and neglected the child's disclosure, possibly believing it to be a minor incident or misunderstanding. It was only when the victim again reported the second and more serious incident on 30th December 2023, with detailed descriptions of the alleged sexual assault, that the mother realized the gravity of the situation.

12. The prosecution further submitted that after the victim identified the applicant through the society's manager or office bearers, the applicant himself admitted to the incident when confronted. It was only after this admission and proper identification that the formal complaint was lodged with the police. The learned APP emphasized that the victim's statement graphically describes the incidents in detail, and such detailed narration by a 10-year-old child cannot be fabricated or tutored.

13. Based on these submissions, the learned APP argued that the present bail application lacks merit and deserves to be rejected in

the interest of justice and to ensure the safety and security of the victim and other children in the society.

14. After hearing the learned counsel for both parties and perusing the material on record, this Court finds it necessary to examine the present bail application in light of the established legal principles governing grant of bail, particularly in cases involving offences against children under the Protection of Children from Sexual Offences Act, 2012.

15. The primary consideration in bail matters is the balance between the personal liberty of the accused and the larger interest of society, including the safety of the victim and witnesses. In the present case, several crucial factors weigh heavily against the grant of bail to the applicant.

16. The charges against the applicant include serious offences under Sections 354, 509, and 323 of the IPC, along with Sections 8 and 12 of the POCSO Act, 2012. These provisions specifically deal with sexual assault and harassment of children, which are considered among the most heinous crimes in our legal system. The legislature, in its wisdom, has enacted the POCSO Act with stringent provisions to protect children from sexual exploitation, recognizing the vulnerable position of minors in society.

17. The victim in the present case is a 10-year-old child, belonging to the most vulnerable section of society. Children of such tender age are incapable of protecting themselves against adult perpetrators and require special protection from the State and its agencies. The Supreme Court in numerous judgments has

emphasized that in cases involving child victims, the primary consideration must be the safety and welfare of the child.

18. The fact that the applicant and the victim's family reside in the same housing society creates a significant risk factor. If released on bail, the applicant would have easy access to the victim and her family, creating possibilities of intimidation, influence, or repetition of the alleged offences. The geographical proximity makes it virtually impossible to ensure the safety of the victim and other children in the vicinity.

19. The prosecution has specifically stated that when confronted through the society's manager, the applicant admitted to the incident. Though this admission may require further verification during trial, it indicates prima facie involvement of the applicant in the alleged offences.

20. While the defence has raised the issue of delay in filing the FIR, this Court finds that the explanation provided by the prosecution is reasonable and consistent with the practical realities faced by families in such sensitive matters. The initial negligence by the mother upon the first disclosure and her subsequent realization of the gravity after the second incident is a natural human response, particularly when dealing with such traumatic revelations involving a minor child.

21. The fact that a 10-year-old victim has provided a graphic and detailed description of the incidents lends credibility to the prosecution case. Children of such age typically do not fabricate stories involving sexual acts unless they have actually experienced

them. The consistency and detail in the victim's statement, as submitted by the prosecution, prima facie supports the allegations.

22. While the defence has relied upon the judgment in *Manish Sisodia vs. Directorate of Enforcement*, this Court finds that the said precedent deals with cases involving economic offences and prolonged incarceration without trial. The present case involves offences against a child, which falls in an entirely different category requiring special consideration for the safety of the victim and society at large.

23. Grant of bail in the present case would send a wrong message to society and may encourage similar offenders. The protection of children from sexual exploitation is a paramount social interest that outweighs the personal liberty of the accused, particularly when there exists prima facie evidence of involvement.

24. Based on the aforementioned analysis and considering all relevant factors, this Court is of the considered view that the present bail application deserves to be rejected. The release of the applicant at this stage would not only jeopardize the safety of the victim but also create a risk of tampering with evidence and witnesses.

25. However, recognizing the fundamental right of the accused to a speedy trial, this Court finds it necessary to ensure that the trial proceedings are conducted expeditiously.

26. In view of the above discussion and analysis:

(i) The bail application filed by the applicant under Section

439 of the Criminal Procedure Code, 1973 is hereby rejected.

(ii) The learned Trial Court is hereby directed to expedite the trial proceedings in Crime No.4 of 2024 .

(iii) Application stands disposed of accordingly.

(AMIT BORKAR, J.)