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

BAIL APPLICATION NO.2944 OF 2024

Mariappa Nityanand Devendra ... Applicant
V/s.
The State of Maharashtra & Anr. ... Respondents

Ms. Anjali Patil with Mr. Tohid Shaikh for the applicant.

Mrs. Megha S. Bajoria, APP for respondent No.1-State.

Ms. Priyanka B. Chavan for respondent No.2.

Mr. Nitin Palande, PSI, Trombay Police Station, is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 16, 2025

P.C.:

1. By this application filed under Section 439 of the Criminal Procedure Code, 1973, the applicant seeks regular bail in connection with Crime Register No.411 of 2023 registered at Trombay Police Station, for offences punishable under Sections 376, 376(2)(N), 376D, 328, 506(2), 323, 504 and 114 of the Indian Penal Code, 1860, read with Section 67A of the Information Technology Act, 2000.

2. As per the case of the prosecution, the First Information Report has been lodged by the stepmother of the applicant. She alleges that she got married to one Nityanand in the year 2015 and has two children from the said wedlock. It is alleged that in the

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year 2020, her two sons from an earlier marriage—one of whom is the present applicant and the other being Vyankatesh—came to reside with her. The prosecutrix has made serious allegations against her husband, stating that he was of whimsical and perverse nature, addicted to watching pornographic content, and forced her to act accordingly. She further alleged that her husband compelled her to engage in sexual acts with his sons—the applicant and his brother—and also recorded such acts in the form of pictures and videos. It is also alleged that her husband himself recorded videos while engaging in sexual acts.

3. The incident came to light when, on 31 August 2023, the sister of the prosecutrix received a WhatsApp message from a relative, who noticed a video on the internet showing a woman involved in sexual activities and inquired whether the woman was the prosecutrix. This led the prosecutrix to realise that objectionable videos involving her had been uploaded on the internet. Consequently, a police report was lodged on 1 September 2023.

4. The applicant came to be arrested on the same day, i.e., 1 September 2023. His bail application filed before the Sessions Court was rejected. The applicant has, therefore, filed the present application before this Court seeking regular bail.

5. Learned Advocate appearing on behalf of the applicant drew attention to the statement of the person who first noticed the said video on the internet and had inquired with the prosecutrix's sister in August 2023. It is submitted that the prosecutrix is an adult

woman. From the statement of the prosecutrix, there is no specific mention of use of force or resistance on her part. The learned Advocate further submitted that from the overall narration of events by the prosecutrix, it appears that the alleged acts were not committed under direct coercion or violence, and that there was implicit consent. She, therefore, prayed that the applicant be released on bail, especially since the issue of consent requires appreciation of evidence at the stage of trial.

6. On the other hand, the learned Additional Public Prosecutor, along with the learned Advocate appointed to represent the prosecutrix, opposed the bail. It was submitted that the allegations are of grave and serious nature. The material in the chargesheet, including the statement of the prosecutrix, clearly attributes a specific and active role to the applicant. It was argued that the acts alleged are not consensual but forced. It was further submitted that the act of uploading such videos on the internet amounts to further violation of the dignity and privacy of the prosecutrix, thereby aggravating the offence. Hence, it was prayed that the bail application be rejected.

7. I have perused the chargesheet and the statements of the prosecutrix and other witnesses. On prima facie examination, the narration of events as recorded in the statement of the prosecutrix indicates that the applicant, along with his brother and the husband of the prosecutrix, was involved in repeated acts of sexual intercourse. There is no categorical assertion in the statement of the prosecutrix of direct use of physical force or of her having actively resisted. The incident, as per her statement, occurred in

the month of June 2023, while the complaint came to be filed only after a relative noticed a video on the internet in August 2023. This delay, coupled with the surrounding circumstances, prima facie suggests that there may have been some degree of implicit consent. However, it needs to be clarified that whether the said acts were truly consensual or were the result of coercion or undue influence is a matter which must be adjudicated during the course of trial upon appreciation of oral and documentary evidence.

8. In the backdrop of the facts and circumstances of the case, and upon going through the material placed on record, this Court is of the opinion that the version of the prosecutrix, as it stands presently, does not show overt and clear use of physical force or any act of resistance during the alleged incidents. The allegations, no doubt, are grave and pertain to sexual exploitation by persons who were closely related to the prosecutrix. However, the incident, according to the prosecutrix herself, had occurred in the month of June 2023, and no complaint was filed until 1st September 2023. It was only when a video was noticed by a third party and brought to the notice of the prosecutrix's sister, that the matter was reported to the police. Such delay in lodging the FIR, in the absence of specific threats or justifiable explanation, is a factor that cannot be ignored while considering bail at the pre-trial stage.

9. It also appears from the record that the applicant is in custody since 1st September 2023, and the charge-sheet has already been filed. The investigation is complete, and there is no material placed before this Court to show that the applicant has attempted to tamper with evidence or influence any witness while

in custody. The trial is likely to take considerable time, and prolonged pre-trial detention, in the peculiar facts of this case, would cause undue hardship to the applicant.

10. At the same time, the nature of allegations and the relationship between the parties require that appropriate conditions be imposed to ensure the applicant does not misuse the liberty granted.

ORDER

(a) The Bail Application is allowed.

(b) The applicant shall be released on regular bail in connection with Crime Register No.411 of 2023 registered with Trombay Police Station, upon furnishing a Personal Bond in the sum of ₹50,000/- (Rupees Fifty Thousand only), with one or more solvent sureties in the like amount, to the satisfaction of the Trial Court.

(c) The applicant shall not directly or indirectly contact, influence, threaten or approach the prosecutrix or any witness in any manner.

(d) The applicant shall report to the concerned Police Station once in a month, on the first Monday of every calendar month, between 10:00 a.m. to 12:00 noon, till the conclusion of the trial.

(e) The applicant shall not leave the territorial jurisdiction of the Trial Court without prior permission.

(f) If it is found that the applicant has violated any of the above conditions, the prosecution shall be at liberty to apply for cancellation of bail.

11. It is made clear that the observations made hereinabove are only for the purpose of deciding this bail application, and the same shall not be construed as an expression of opinion on the merits of the case at the stage of trial.

(AMIT BORKAR, J.)