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

BAIL APPLICATION NO.3340 OF 2024

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Yash Anil Nagarkar

... Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

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

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

Ms. Munira Palampurwala for respondent No.2.

Mr. Bhiva H. Sawant, PSI, Bhandup Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 18, 2025

P.C.:

1. This is an application filed under Section 439 of the Criminal Procedure Code, 1973, wherein the applicant is seeking bail in connection with Crime No.359 of 2024 registered with Bhandup Police Station for offences punishable under Sections 376, 376(2) (n), 376(i) and 506 of the Indian Penal Code, 1860 and Sections 4, 8, 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. The charges relate to rape, aggravated penetrative sexual assault, sexual assault and criminal intimidation involving a minor victim.

2. According to the prosecution story, the victim came to know

the accused in October 2023 as both were residing in the same locality. Initially, they started meeting each other as friends and gradually their friendship developed into what appeared to be a romantic relationship. The prosecution alleges that in the month of January 2024, the accused took the victim to a lodge in Shirdi under the false promise of marriage. At the said lodge, the accused allegedly committed forcible sexual intercourse with the victim on multiple occasions. The prosecution further alleges that the accused threatened the victim not to disclose these acts to anyone. Subsequently, when the victim discovered that she had become pregnant as a result of these alleged acts, she mustered courage and lodged a complaint on 11th May 2024. The delay in filing the complaint is attributed to the threats given by the accused and the victim's tender age and mental condition.

3. The applicant had earlier approached the learned Special Judge with an application for bail, which was rejected. Being aggrieved by the said order of rejection, the applicant has now filed the present application before this Court seeking bail under Section 439 of the Criminal Procedure Code, 1973. The applicant seeks to be released on bail pending trial, arguing that continued detention is not necessary in the facts and circumstances of the case.

4. The learned advocate appearing for the applicant has made several submissions in support of the bail application. Firstly, it is submitted that on the date of the alleged incident, the age of the victim was 15 years and 9 months, while the age of the applicant was approximately 20 years, making the age difference relatively

small. The counsel argues that the narration of the incident as given by the victim and the material available on record do not clearly suggest the use of actual force or coercion by the applicant. The advocate further submits that the crucial aspect regarding whether there was a false promise of marriage from the very inception of the relationship is a matter that needs to be properly adjudicated during the trial proceedings, and cannot be conclusively determined at this stage. The counsel emphasizes that considering the young age of both the victim and the applicant, and the nature of their relationship, the continued pre-trial detention of the applicant is not warranted and serves no useful purpose.

5. Per contra, the learned Additional Public Prosecutor (APP) representing the State and the learned advocate specifically appointed to represent the interests of the victim have vehemently opposed the bail application on several grounds. They have contended that in cases involving minors under the POCSO Act, the question of consent of the victim is completely irrelevant and holds no ground in law, as a minor is incapable of giving valid consent for sexual acts. The prosecution argues that the detailed narration of the incident given by the victim clearly indicates the use of force and criminal intimidation by the applicant. They further submit that the threats given by the accused not to disclose the incident adequately explain and justify the delay in filing the complaint. The prosecution emphasizes the serious nature of the offences and the need to protect the victim from any potential influence or harassment by the accused if released on bail.

6. Having carefully considered the submissions made by the learned counsel appearing on behalf of both sides, and having perused the material placed on record, this Court proceeds to examine the merits of the bail application in the light of established legal principles.

7. Prima facie, it appears from the material on record that the applicant was approximately 20 years of age and the victim was around 15 years and 9 months old on the date of the alleged incident. The age difference between the parties, though legally significant under the POCSO Act, is relatively narrow, with both being in their teenage years or early adulthood. It also appears from the prosecution case itself that the victim voluntarily accompanied the applicant to Shirdi where they stayed together for some time.

8. It is noteworthy that the alleged incident was disclosed by the victim after a considerable period of more than three months had elapsed. While the prosecution attributes this delay to threats and the tender age of the victim, the substantial gap between the alleged incident and its reporting raises questions that require careful examination during trial.

9. The central issues in this case - whether the alleged acts were based on consent between the parties, and more importantly, whether such consent (if any) has any legal relevance given the victim's age under the POCSO Act - are complex questions of fact and law that can only be properly adjudicated during the course of trial. These are not matters that can be conclusively determined at

the bail stage based on preliminary material.

10. A significant factor weighing in favor of the applicant is that he has been in custody since his arrest on 16th May 2024. More than one year has now elapsed without the framing of charges, which indicates procedural delays in the case. Prolonged pre-trial detention without progress in the case proceedings goes against the principles of speedy justice and the presumption of innocence.

11. The applicant, being approximately 20 years old at the time of the alleged incident, can be considered a young adult who may have acted imprudently due to his tender age and lack of maturity. Significantly, there is no material on record to suggest that the applicant has any previous criminal antecedents or history of similar offences, which is a factor that weighs in his favor for the grant of bail.

12. While the Court is mindful of the serious nature of the charges under the POCSO Act and the need to protect the victim, it must also balance these considerations against the fundamental right of the applicant to liberty and the principle that bail is the rule and jail is the exception. The applicant's continued detention at this stage, particularly given the procedural delays and his clean antecedents, appears disproportionate.

13. In view of the aforesaid analysis and reasoning, this Court is of the considered opinion that the bail application deserves to be allowed. The applicant has been in custody for a substantial period without significant progress in the case, he has no criminal antecedents, and the complex factual and legal issues involved

require adjudication at trial rather than being determinative at the bail stage. The young age of the applicant and the specific circumstances of the case further support the grant of bail, subject to appropriate conditions to ensure the safety of the victim and the integrity of the trial process.

14. Hence, the following order is passed:

(i) The application is allowed.

(ii) The applicant Yash Anil Nagarkar shall be released on bail in connection with Crime No.359 of 2024 registered with Bhandup Police Station for offences punishable under Sections 376, 376(2)(n), 376(i) and 506 of the Indian Penal Code, 1860 and Sections 4, 8, 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012, on his executing a personal bond of ₹25,000/- (Rupees Twenty-Five Thousand only) with one or more sureties in the like amount.

(iii) The applicant shall not, in any manner, contact the victim or her family members, directly or indirectly.

(iv) The applicant shall not in any manner threaten, influence or induce any prosecution witness.

(v) The applicant shall cooperate with the prosecution and attend all trial dates regularly.

(vi) The applicant shall not tamper with evidence or influence any witness.

(vii) The applicant shall provide his current residential address and inform the court in case of change of residence.

(viii) The applicant shall not commit any offence during the pendency of trial, failing which his bail is liable to be cancelled.

(AMIT BORKAR, J.)