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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3889 OF 2024**

Harkishankumar Budhan Mandal ... Applicant
V/s.
The State of Maharashtra & Anr. ... Respondents

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Mr. Arvind R. Singh for the applicant.

Ms. Megha Bajoria, APP for the State.

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

Mr. Sanjay Pawar, P. I. and Mr. Sunil Rane Juhu 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 regular bail in connection with POCSO Special Case No.83 of 2023. The applicant stands accused of offences punishable under Sections 376(2)(n) and 506 of the Indian Penal Code, 1860, and under Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012. The charges against the applicant relate to aggravated penetrative sexual assault, criminal intimidation, and various offences under the POCSO Act for alleged sexual crimes against a minor child.

2. According to the prosecution case, the complainant lodged a First Information Report alleging that the applicant committed forcible sexual intercourse with the victim who was aged around

17 years at the time of the alleged incident. It is the prosecution's case that the applicant not only committed the sexual assault but also threatened the victim not to disclose the incident to anyone, thereby causing criminal intimidation. The gravity of the matter came to light only when the victim became pregnant as a result of the alleged sexual assault. The period during which the alleged incidents took place, as per the prosecution's version, appears to be from August 2022 to December 2022, indicating a continuous pattern of sexual abuse over several months.

3. The applicant was arrested on 6th December 2022 in connection with the aforesaid case. After due investigation, the prosecution has filed the charge sheet before the competent court, thereby completing the investigation process. When the matter came up for consideration of bail before the learned Special Judge, the application filed by the applicant for grant of bail was rejected by the court below. Being aggrieved by the said order of rejection, the applicant has now approached this Hon'ble Court by filing the present application under Section 439 of the Criminal Procedure Code, seeking regular bail.

4. The learned advocate appearing for the applicant has vehemently contended that on the date of the alleged incident, the victim was not a minor within the meaning of the law. The counsel has further argued that even according to the prosecution's own case, the victim was 17 years old at the time of the incident, and the documents placed on record do not conclusively establish that she was below 18 years of age. The defence has taken a strong position that the relationship between the applicant and the victim

was entirely consensual in nature, and there is no material evidence on record to prove any element of force, coercion, or criminal intimidation as alleged by the prosecution.

5. Moreover, the learned counsel has drawn the court's attention to the fact that in the statement recorded under Section 35 of POCSO Act, the victim herself has categorically stated that the sexual intercourse was consensual and voluntary. The defence argues that this admission by the victim completely demolishes the prosecution's case of forcible sexual assault and renders the charges under the POCSO Act inapplicable, as the same would only be attracted if the victim was indeed a minor at the time of the incident.

6. Per contra, the learned Additional Public Prosecutor representing the State and the learned advocate appearing for the victim have strongly opposed the bail application. Their primary contention is that on the date of the alleged incident, the victim was indeed a minor, being below 18 years of age, and therefore the provisions of the POCSO Act are fully attracted to the case.

7. The prosecution has further argued that the applicant, being the brother-in-law of the victim, was in a position of trust and authority, and he misused his influence and relationship to exploit the minor victim. It is contended that the applicant used his familial position to exercise undue influence over both the victim and her family members, thereby creating a situation where the victim and her family are now giving a no-objection to his release on bail.

8. The prosecution submits that such influence and pressure tactics are common in cases involving sexual offences within families, and the court should not be swayed by any such no-objection certificate or change in the victim's stance, as the same may be a result of continued pressure, threats, or family dynamics rather than a genuine change of heart.

9. This Court has carefully considered the submissions made by both sides and has examined the material placed on record. Upon perusal of the case record and the documents filed, this Court finds that there is considerable doubt regarding the exact age of the victim at the time of the alleged incident. The prosecution has failed to produce conclusive documentary evidence to establish that the victim was below 18 years of age during the period of alleged incidents (August 2022 to December 2022).

10. This Court notes that in the statement recorded under Section 35 of POCSO Act, the victim has clearly stated that the intercourse was consensual. While the Court is aware that consent is irrelevant in cases where the victim is below 18 years of age, the question of consent becomes material when the age of the victim itself is in dispute.

11. The applicant has been in custody since 6th December 2022, which amounts to more than two years of incarceration. The investigation has been completed and the charge sheet has been filed. Further detention of the applicant would not serve any purpose as far as the investigation is concerned.

12. Therefore, considering the totality of circumstances, the

interest of justice would be served by granting bail to the applicant subject to appropriate conditions to ensure his presence during trial and to maintain law and order.

13. Hence, the following order is passed:

(i) The application is allowed.

(ii) The applicant Harkishankumar Budhan Mandal shall be released on bail in connection with POCSO Special Case No.83 of 2023 for offences punishable under Sections 376(2) (n), 506 of the Indian Penal Code, 1860 and under Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences 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.)