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

BAIL APPLICATION NO.4058 OF 2024

Sushil Arjun Tripathi	... Applicant
V/s.	
The State of Maharashtra & Anr.	... Respondents

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Mr. Chitranjan Kumar i/by CLF & Co., for the applicant.

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

Mr. Sanjay Pawar, PSI, Gorai Police Station, Mumbai, is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 5, 2025

P.C.:

1. The applicant has filed this regular bail application under Section 439 of the Criminal Procedure Code, 1973 in connection with POCSO Special Case No. 121 of 2023. The case arises from Crime Register No. 2 of 2023 registered at Gorai Police Station, Mumbai. The accused is charged with serious offences under various sections including rape, sexual harassment, criminal intimidation under the Indian Penal Code, provisions of the POCSO Act, and cyber crimes under the Information Technology Act.

2. According to the prosecution's version, the accused developed a relationship with a minor girl (the victim) in 2021.

During this relationship, he took her to a hotel where he forced her into sexual intercourse. The accused continued to maintain physical relations with the victim by promising to marry her. However, when the victim completed 18 years of age and asked him to fulfill his promise of marriage, the accused refused.

3. The accused then resorted to threats and blackmail. He threatened to send objectionable photographs and videos of the victim to her parents if she did not comply with his demands. Due to this harassment, the victim was forced to change her mobile phone number. Despite this, the accused managed to obtain her new number and contacted her in December 2022. He emotionally manipulated her by threatening to harm himself if she did not speak to him.

4. On 26th December 2022, both went to Goa where they again had physical relations. When the accused continued to refuse marriage, the victim started avoiding him. On 10th January 2023, the accused called the victim saying he was sending her a gift and sent her a link. Upon opening the link, the victim discovered it contained her private photographs and videos of their intimate moments. The accused had sent this same link to the victim's brother, parents, and other relatives, causing her extreme humiliation and distress. This led the victim to file a complaint at Gorai Police Station.

5. The learned counsel for the applicant has pointed out several contradictions in the victim's statements. There are material differences between her statement recorded under Section 161

Cr.P.C. and her statement under Section 164 Cr.P.C. In the Section 161 statement, the victim described them as friends in a love relationship, and alleged that on 24th February 2022, the applicant gave her some liquid substance and then forced her into sexual intercourse. However, in her Section 164 statement, she stated that the intercourse was consensual based on the promise of marriage, and that the accused later videographed the act and blackmailed her with these videos.

6. The applicant argues that the Section 164 statement suggests the acts were based on a promise to marry, while the Section 161 statement alleges the use of some intoxicating substance. The defense contends that there is no clear indication of force or coercion by the applicant. At the time of the alleged incident, the victim was approximately 17 years old and the applicant was 20 years old. The applicant has no previous criminal record. The applicant further submits that the applicant was arrested on 23rd January 2023, charges are yet to be framed, and the prosecution has cited 30 witnesses. Given these circumstances, the trial is unlikely to conclude in the near future. Therefore, the applicant seeks regular bail.

7. The learned Additional Public Prosecutor opposed the bail application, arguing that the applicant had forced sexual intercourse with the victim and later sent inappropriate photographs and videos to the victim's parents and relatives. The prosecution maintains that while the sexual intercourse was initially based on a promise of marriage, the applicant later refused to marry the victim. This clearly shows that the promise

was false from the beginning. The act of distributing private photographs and videos to the victim's family members demonstrates that the applicant never had any genuine intention to marry the victim and was only exploiting her. Based on these grounds, the prosecution prayed that the bail application should be rejected.

8. After careful examination of the record, this Court finds significant and material contradictions in the victim's statements that raise serious questions about the prosecution's case: In the Section 161 Cr.P.C. statement, the victim alleged that the accused administered some liquid substance and then forced her into sexual intercourse. In the Section 164 Cr.P.C. statement, she stated that the intercourse was consensual based on promise of marriage. These are not minor inconsistencies but go to the very root of the prosecution's case. The difference between forcible intercourse after administering intoxicating substance and consensual intercourse based on promise of marriage is fundamental and affects the entire nature of the charges. The victim's own statements show confusion about whether this was a case of rape by intoxication or a consensual relationship that later turned sour due to breach of promise to marry.

9. The prosecution has failed to establish prima facie evidence of force or coercion. The material on record suggests that the victim and accused were in a relationship from 2021. They traveled together to Goa in December 2022, which indicates voluntary participation. The victim continued the relationship even after the alleged first incident. There is no medical evidence of

force or violence.

10. While the case involves POCSO charges due to the victim being a minor at the relevant time, the Court notes that the age difference between the accused (20 years) and victim (17 years) is minimal - only 3 years. Both were young adults in what appears to be a consensual relationship. The accused was himself very young at the time of alleged offence.

11. The applicant has a clean criminal record with no previous involvement in any criminal activity. This is a significant factor favoring grant of bail as it indicates that the accused is not a habitual offender and is unlikely to commit similar offences while on bail.

12. The prosecution has cited 30 witnesses, and charges are yet to be framed. Given the current state of court proceedings and the number of witnesses, the trial is unlikely to conclude in the near future. Keeping the accused in custody for an indefinite period would amount to punishment without trial, which is against the principles of natural justice.

13. There is nothing on record to suggest that the applicant is a flight risk. He has been cooperating with the investigation and there is no evidence that he will abscond if granted bail.

14. The main evidence in this case consists of digital materials (photographs and videos) which have already been secured by the investigating agency. There is no risk of the accused tampering with this evidence. As for witness tampering, appropriate conditions can be imposed to prevent any such interference.

15. The accused has been in custody since 23rd January 2023. Prolonged incarceration without trial affects not only the accused but also his family members who depend on him. The right to speedy trial is a fundamental right, and denying bail would effectively deny this right.

16. Considering the totality of circumstances, the material contradictions in the prosecution's case, the constitutional principles governing bail, and the lengthy trial process ahead, this Court is of the considered opinion that the interests of justice would be better served by granting bail to the applicant rather than keeping him in prolonged custody.

17. Hence, following order is passed:

- i) The bail application is allowed;
- ii) The applicant is directed to be released on regular bail in connection with POCSO Special Case No.121 of 2023 arising out of Crime Register No.2 of 2023 registered with Gorai Police Station, Mumbai for offences punishable under Sections 376(2)(n), 354(c), 201, 506 of the Indian Penal Code, 1860 read with Sections 4, 8, and 12 of the Protection of Children from Sexual Offences Act, 2012 and Sections 66(E), 67(A), and 67(B) of the Information Technology Act, upon furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or more solvent sureties in the like amount, to the satisfaction of the Trial Court, subject to the following conditions:

- (a) The applicant shall not tamper with evidence, or directly or indirectly contact, influence, threaten, or intimidate any witness, particularly family members of the victim.
- (b) The applicant shall report to the Gorai Police Station, Mumbai once in three months, specifically on the 1st Monday, between 10:00 a.m. and 12:00 noon, until further orders.
- (c) The applicant shall not leave the territorial jurisdiction of the Trial Court without its prior written permission.
- (d) The applicant shall not commit any offence or engage in any criminal activity during the pendency of the trial.
- (e) The applicant shall, at the time of furnishing surety, provide his current residential address and mobile number to the Investigating Officer as well as the Trial Court, and shall inform the Court in writing of any change in residence or contact details during the pendency of the case.
- (f) In case of any breach of the conditions mentioned above, the prosecution shall be at liberty to move for cancellation of bail.

18. The bail application is allowed and disposed of.

(AMIT BORKAR, J.)