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

BAIL APPLICATION NO. 4617 OF 2024

Hitesh Shantilal Waghela	... Applicant
V/s.	
The State of Maharashtra and another	... Respondents

Mr. Karim Pathan a/w. Mr. Fardeen Shaikh and
Mr. Kailash for applicant.

Ms. Supriya Kak, APP for respondent No.1-State.

Ms. Madhuri Pate, API, Nerul Police Station, Navi
Mumbai.

CORAM : AMIT BORKAR, J.

DATED : JULY 14, 2025

P.C.:

1. By the instant bail application filed under Section 439 of the Criminal Procedure Code, 1973 (for short, the Cr.P.C.), the applicant is seeking regular bail in connection with Crime Register No.436 of 2023 registered with Nerul Police Station for offences punishable under Sections 363 of the Indian Penal Code, 1860 (for short, the IPC). Subsequently, provisions under Section 376 of the IPC and Sections 4, 5(L) and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, the POCSO Act) have also been invoked in the course of investigation.

2. The prosecution case, as gathered from the charge-sheet and the First Information Report, is as follows: Crime came to be

registered on the basis of the report filed by mother of the victim on 20.09.2023. It is her contention that her daughter, who is victim in this case, is 14 years old. On 19.09.2023 she found that victim was not in house, she has taken her search, but she was not found. The mother states that she searched the entire neighbourhood and contacted relatives and friends, but could not locate her daughter. The informant further states that despite extensive search efforts throughout the night and following morning, the victim remained untraceable. Previously also for twice she has left the house. On taking her search, she was not found. So the informant realized that somebody has kidnapped her daughter. The mother informed the police that on earlier occasions, the victim had returned home within a day or two, but this time the prolonged absence raised serious concerns. The pattern of repeated disappearances and the unusual duration of absence led the informant to suspect foul play. Accordingly, crime came to be registered. The FIR was lodged after the informant exhausted all possible means of locating her daughter and feared for her safety and well-being.

3. The victim was found and her statement was recorded on 21.09.2023, whereby she contended that she came with the contact of the present applicant and that both liked each other. They met several times and had physical relations. The victim was traced through technical surveillance and was found in Mumbai in the company of the present applicant. During the recording of her statement, the victim disclosed that she had been in communication with the applicant through social media platforms

for several months prior to the incident. She further stated that their meetings had progressed from casual conversations to intimate encounters over a period of time. It is her contention that on 19.09.2023, she had taken ₹ 1,000/- from the purse of her mother and she went to the present applicant. Then she has switched-off her mobile. The victim admitted that she deliberately took the money without her mother's knowledge and permission, and that she intentionally switched off her mobile phone to avoid being traced by her family members. She further stated that the applicant had suggested switching off the mobile phone to prevent detection. Then they travelled to Mumbai and accordingly, it is her contention that she is having love affair with the present applicant and they had sexual intercourse for several times. The victim claimed that they stayed in a lodge in Mumbai for two days and nights, during which period they engaged in sexual acts on multiple occasions. She described her relationship with the applicant as a romantic liaison based on mutual affection.

4. The Learned Counsel for the applicant submitted that the relationship between the applicant and the victim was consensual. She left her house on her own, which also shows that there was no force or coercion on the part of the applicant. The defence contends that the victim's voluntary departure from her parental home, her own admission of taking money for the journey, and her deliberate act of switching off her mobile phone clearly demonstrate that she acted of her own free will without any compulsion or threat from the applicant. The defence further argues that the victim's consistent statements regarding the

consensual nature of their relationship and her admission of emotional attachment to the applicant support the case for bail. In her statement recorded under Section 164 of the Cr.P.C., the victim herself has stated that their relationship was consensual and the acts were also consensual. The defence emphasizes that the statement recorded before the Magistrate under Section 164 of Cr.P.C. carries significant evidentiary value as it is made under oath and without any coercion from the investigating agency. The victim's clear admission that she willingly participated in the relationship and physical acts forms the cornerstone of the defence's argument for bail. The applicant was aged 19 years at the relevant time. Therefore, he seeks regular bail. The defence argues that the applicant being a young adult with no previous criminal record and the consensual nature of the relationship as admitted by the victim herself, makes him a suitable candidate for bail.

5. On the other hand, the learned APP opposed the application by contending that whether there was consent or not is an issue, which is required to be adjudicated during the trial. The prosecution submits that the question of consent in cases involving minors is a complex legal issue that cannot be decided summarily at the bail stage. The APP argues that the victim's statements, though seemingly indicating consent, need to be examined in the context of her age, mental capacity, and the power dynamics involved in the relationship. The prosecution further contends that the victim's apparent consent does not absolve the applicant of criminal liability under the relevant provisions of law. Even further,

the consent of the applicant is not admissible under the provisions of POCSO Act, considering the age of the applicant. The APP emphasizes that under the POCSO Act, the concept of consent is legally irrelevant when the victim is below 18 years of age, as the law presumes that a minor cannot give valid consent for sexual acts. The prosecution argues that the POCSO Act creates a statutory presumption that any sexual act with a person below 18 years is an offence, regardless of whether the minor appeared to consent. She, therefore, submits that the application deserves to be rejected. The APP concludes that considering the serious nature of the offences under POCSO Act, the vulnerability of the victim, and the need to protect the interests of the minor, the bail application should be dismissed, and the applicant should remain in custody pending trial.

6. Having carefully considered the submissions made by both sides, the material on record, and the relevant legal provisions, this Court finds it appropriate to grant bail to the applicant for the following reasons:

7. While the charges under POCSO Act are undoubtedly serious, the Court must examine the specific circumstances of the present case. The victim's consistent statements, both during investigation and before the Magistrate under Section 164 of Cr.P.C., clearly indicate that she voluntarily left her parental home and willingly participated in the relationship. The fact that she took money from her mother's purse and deliberately switched off her mobile phone to avoid detection demonstrates her conscious decision to accompany the applicant. There is no allegation of

physical force, threat, or coercion in the prosecution case.

8. The applicant was 19 years old at the time of the alleged incident, while the victim was 14 years old. Though the age difference is significant from a legal standpoint, the Court notes that the applicant himself was a young adult. The case does not involve an adult of advanced age exploiting a minor child. The relationship, as described by the victim, appears to have developed over time through mutual interaction rather than through any predatory behavior.

9. The victim's statements recorded during investigation and her statement under Section 164 of Cr.P.C. are consistent in describing the relationship as consensual. While the legal validity of such consent is questionable under POCSO Act, the victim's clear articulation of her voluntary participation and emotional attachment to the applicant suggests absence of the kind of exploitation that the POCSO Act seeks to prevent. The victim has not alleged any force, fraud, or manipulation on the part of the applicant.

10. The applicant has been in custody since his arrest and has cooperated with the investigation. There is no material on record to suggest that he would flee from justice or tamper with evidence if released on bail. The investigation appears to be substantially complete, and the victim's statements have already been recorded.

11. The applicant has already been in custody for a considerable period since his arrest. Given the current pendency of cases in the criminal justice system, the trial is likely to take substantial time to

conclude. Keeping the applicant in prolonged custody, particularly in view of the specific circumstances of this case, would amount to punishment before conviction.

12. After careful consideration of all the circumstances, the Court is of the view that the applicant has made out a case for grant of bail. The peculiar facts of the case, the victim's consistent statements about voluntary participation, the absence of allegations of force or coercion, and the applicant's young age at the time of the incident are factors that weigh in favor of granting bail.

13. On overall consideration of the material on record, the applicant has made out a case for release on bail.

14. Hence, the following order is passed:

15. The applicant Hitesh Shantilal Waghela is directed to be released on regular bail in connection with Crime Register No.436 of 2023, upon furnishing a personal bond of ₹ 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 report Nerul Police Station once in three months between 10.00 a.m. to 12.00 noon, until further orders.
- b) The applicant shall not tamper with the evidence or attempt to influence any witness. He shall not contact the victim or her family members.

- c) The applicant shall not enter the limits of Nerul Police Station during the pendency of the trial, except for the purpose of attending the police station.
- d) The applicant shall appear before the Trial Court on every date of hearing unless prevented by sufficient cause.
- e) The applicant shall not leave the territorial jurisdiction of the Trial Court without prior permission.
- f) The applicant shall not indulge in any criminal activity during the pendency of the trial.
- g) Any breach of these conditions shall result in the prosecution moving for cancellation of bail before the Trial Court.

16. The bail application is allowed and disposed of.

(AMIT BORKAR, J.)