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

BAIL APPLICATION NO.4957 OF 2024

Amit Kumar Ranjit Singh	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Mushahid R. Khan with Azeem Khan i/by Rukhsar Shaikh for the applicant.

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

Ms. Gargi Warunjikar, for respondent No.2-victim (appointed as Legal Aid).

Mr. S.S. Ghag, PSI (Pairavi Adhikari), Malawani Police Station, is present.

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CORAM : AMIT BORKAR, J.

DATED : JUNE 20, 2025

P.C.:

1. By way of this present bail application, the applicant herein is seeking his release on regular bail in connection with Crime Register No.1368 of 2022 registered with Malvani Police Station for offences punishable under Sections 354 (assault or criminal force to woman with intent to outrage her modesty), 376(2)(n)(3) (rape by relative, guardian or teacher of or person in a position of trust or authority towards the woman) of the Indian Penal Code, 1860 read with Sections 4 (punishment for penetrative sexual assault), 5 (punishment for aggravated penetrative sexual assault), 6 (punishment for aggravated sexual assault) and 8 (punishment for sexual harassment) of the Protection of Children from Sexual

Offences Act, 2012 (hereinafter referred to as "POCSO Act").

2. According to the case put forth by the prosecution, the victim was aged 14 years and 7 months on the date when the first incident of sexual assault took place. The prosecution alleges that the applicant, being the maternal cousin of the victim, committed forcible sexual intercourse with the said minor victim by taking advantage of his familial relationship and the trust reposed in him by the victim's family.

3. The prosecution further alleges that there were repeated incidents of sexual intercourse committed against the victim girl over a period of time. The applicant allegedly threatened the victim that he would make the video recordings of their sexual acts viral and public, thereby using intimidation and blackmail to continue his criminal acts. This threat created an atmosphere of fear and coercion, preventing the victim from reporting the matter to her family or authorities.

4. The criminal acts of the applicant came to light only when the victim's pregnancy was detected on 9th December 2022, following which she gathered courage to lodge a formal complaint with the police authorities. The delay in reporting can be attributed to the victim's tender age, the relationship of trust with the accused, and the constant threats and intimidation employed by the applicant to suppress the matter.

5. The learned Advocate appearing for the applicant has put forth the defense that the alleged relationship between the applicant and the victim was consensual in nature. However, the

learned counsel has fairly conceded that in cases involving minors below the age of 18 years, the question of consent becomes legally irrelevant as per the provisions of the POCSO Act.

6. The counsel has further submitted that no material evidence has been placed on record by the prosecution to establish that the victim offered any resistance to the alleged acts or that any physical force was applied by the applicant upon the victim during the commission of the alleged offences. The counsel argues that the absence of evidence regarding use of force should be considered in favor of the applicant.

7. The learned Advocate has also highlighted the age difference between the parties, stating that the applicant is presently 20 years old whereas the victim was approximately 14 years and 7 months at the time of the incident. Based on these submissions, the counsel has earnestly requested this Court to grant regular bail to the applicant, arguing that the case does not warrant continued detention.

8. Per contra, the learned Additional Public Prosecutor (APP) representing the State and the learned Advocate appointed through the Legal Aid Services to represent respondent No.2 (the victim) have vehemently opposed the bail application on several legal and factual grounds. The prosecution has submitted that considering the tender age of the victim, who was a minor below 18 years at the time of the incident, the question of consent completely loses its legal significance and relevance. The law under the POCSO Act is clear that no minor below the age of 18

years can give valid consent for any sexual act, and any such act constitutes a criminal offence regardless of apparent consent.

9. The prosecution has further argued that the acts committed by the applicant, particularly resulting in the victim becoming pregnant and the continuous relationship maintained by exploiting the familial bond, clearly attract the provisions of Section 5 of the POCSO Act, which deals with aggravated penetrative sexual assault. The prosecution contends that the gravity and seriousness of the charges, combined with the specific circumstances of the case, make the applicant undeserving of the discretionary relief of bail.

10. The victim's counsel has additionally emphasized that the applicant, being in a position of trust as a family member, has grossly violated that trust and caused immense physical and psychological trauma to the minor victim. Therefore, it has been submitted that the applicant is not entitled to be released on bail at this stage of the proceedings.

11. Having heard the learned counsels for both sides and having perused the material on record, this Court proceeds to analyze the matter in the light of established legal principles governing grant of bail, particularly in cases involving offences under the POCSO Act.

12. The victim being 14 years 7 months at the time of incident clearly establishes that she was a minor. The question of consent, is irrelevant in law. However, the absence of allegations of physical force or violent conduct is a factor that can be considered while

determining the quantum of bail conditions.

13. The applicant being the maternal cousin of the victim is a matter of concern as it involves breach of familial trust. However, this Court notes that the relationship is not that of a direct guardian, parent, or person exercising immediate authority over the victim.

14. The investigation appears to be substantially complete with the charge sheet having been filed. The main evidence being the testimony of the victim and medical evidence, the likelihood of tampering appears minimal, particularly if appropriate conditions are imposed.

15. The applicant is a young person aged 20 years with no previous criminal antecedents on record. The specific circumstances of this case arising from a familial relationship reduce the likelihood of similar offences against unknown victims.

16. This Court is mindful of the decision in *Satender Kumar Antil vs. CBI (2022) 10 SCC 51*, where the Supreme Court emphasized that even in serious offences, prolonged incarceration without trial violates the fundamental right to liberty under Article 21 of the Constitution.

17. The Supreme Court in *Sanjay Chandra vs. CBI (2012) 1 SCC 40* has held that the basic rule is bail and not jail, and that denial of bail amounts to punishment before conviction, which is against the basic principles of criminal jurisprudence.

18. While this Court is deeply conscious of the trauma suffered by the victim and the need to protect children from sexual offences, it must also consider that the applicant has been in custody for a considerable period and is entitled to the constitutional protection of liberty unless there are compelling reasons to deny the same.

19. The investigation being complete and charges having been framed, the trial Court can ensure expeditious disposal of the case while protecting the interests of the victim through appropriate directions.

20. After careful consideration of all the circumstances, this Court finds that while the charges against the applicant are serious, the following factors weigh in favor of granting bail:

21. The applicant has been in custody for a substantial period and there is no indication of the trial concluding in the immediate future. There are no previous criminal antecedents against the applicant. The investigation is complete and the charge sheet has been filed, reducing the risk of evidence tampering. The applicant is young and the specific circumstances of the case reduce the likelihood of repetition of similar offences.

22. Appropriate conditions can be imposed to ensure the safety of the victim and the integrity of the trial process. Prolonged detention without trial would amount to pre-conviction punishment, which is against the principles of natural justice. However, considering the nature of the charges and the need to protect the victim, this Court deems it appropriate to impose strict

conditions to ensure that the liberty granted is not misused and that the trial proceeds smoothly without any hindrance.

23. On overall consideration of the facts and circumstances above, in my opinion, the applicant has made out a case for release on bail. Hence, the following order is passed:

- a) The bail application is allowed.
- b) The applicant shall be released on bail in connection with Crime Register No.1368 of 2022 registered with Malvani Police Station for offences punishable under Sections 354, 376(2)(n)(3) of Indian Penal Code, 1860 read with Sections 4, 5, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012, 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 learned Special Court.
- c) The applicant shall not, in any manner, contact the victim or her family members, directly or indirectly.
- d) The applicant shall not enter the locality where the victim resides, and shall maintain a distance of at least 500 meters from the place of alleged incident.
- e) The applicant shall cooperate with the prosecution and attend all trial dates regularly.
- f) The applicant shall not tamper with evidence or influence any witness.

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

h) Any breach of these conditions shall result in the prosecution moving for cancellation of bail before the Special Court.

24. The bail application stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)