



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

BAIL APPLICATION NO.256/2023

KAVITA PINTU DHIVAR @ DHALI ..APPLICANT
VS.
THE STATE OF MAHARASHTRA & ANR. ..RESPONDENT

Adv. Sana Raees Khan a/w. Adv. Aniket C. Pardeshi for the applicant.

Mr. N. B. Patil, APP for the State.

Adv. Vilasini Balasubramanian for the respondent no.2.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 12, 2023.

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for bail in respect of the offence punishable under Sections 376(2)(n), 323, 504, 506 read with 34 of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 4 and 6 of the the Protection of Children from Sexual Offences Act, 2012 ("POCSO", for short) registered on 1/8/2022 vide C.R. No.292/2022 with Nerul Police Station. The date of the incident is between 3/8/2017 to 22/7/2022.

3. The applicant is a woman. The applicant was arrested on 5/8/2022 and now is in custody for more than one year and one month. The victim, 15 years old, narrated that she lost her parents when she was three months old. The victim was residing with her grandfather in West Bengal. The applicant was known to the victim's grandfather. Eight years prior to the incident, the applicant brought the victim along with her to Nerul. It is alleged that the applicant was working in a Mall. The applicant made the victim to work in the Mall. The applicant forced the victim to have sexual relations with the employees working in the Mall. It is then alleged that she was made to work in the house of applicant's daughter. The victim alleged that the applicant's son-in-law that is the accused no.1 had forcible sexual intercourse with her. Hence the First Information Report (FIR).

4. Learned counsel for the applicant submitted that there is a delay in lodging the FIR. It is further submitted that possibility of false implication cannot be ruled out. The applicant had filed a complaint against one Tumpa Dalai who was working with the applicant. The said Tumpa Dalai

was removed from the services because she was caught stealing something from the shop. The complaint is filed by the victim at the behest of the said Tumpa Dalai as the materials on record would indicate.

5. Learned APP as well as learned counsel for the respondent no.2 vehemently opposed the application and contended that serious accusations are made by the victim against the present applicant. It is contended that the applicant is a mastermind who has abetted the victim to have sexual intercourse with the accused no.1 and other persons.

6. I have perused the statement of the victim. The accused no.1- son-in-law of the applicant has been arrested and is in custody. The applicant is in custody for more than one year and one month. It is the contention of learned counsel for the applicant that the victim refused to undergo medical examination. It is further submitted by learned counsel for the applicant that though the victim has stated that she was pregnant and undergone abortion, but the doctor who the victim stated to have conducted the abortion of the victim has stated that there is no record to

indicate that the victim had ever visited her clinic.

7. Suffice it to observe that the applicant is a woman. The applicant is in custody for more than one year and one month with no possibility of the trial concluding any time soon. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported against the applicant. In the facts of the present case, instead of prolonging the custody of the applicant, I am inclined to enlarge the applicant on bail. The applicant will face the consequences of found guilty in the trial. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant - Kavita Pintu Dhivar @ Dhali in connection with C.R. No. 294/2022 with Nerul Police Station shall be released on bail on her furnishing P.R. Bond of Rs.25,000/- with one or more local sureties in the like amount.

(c) The applicant is permitted to furnish cash bail surety in the sum of Rs. 25,000/- for a period of 6 weeks in lieu of surety.

(d) The applicant shall attend the Investigating Officer of Nerul police station once in two months i.e. on first Monday of every alternate month between 11.00 a.m. and 1.00 p.m. commencing from October 2023.

(e) It is made clear that any attempt on the part of the applicant to contact the victim will entail the consequence of the prosecution or the victim to apply for the cancellation of bail.

(f) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(g) On being released on bail, the applicant shall furnish her contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(h) The applicant shall attend the trial regularly.

(i) The applicant shall surrender her passport, if any, to the investigating officer.

8. The application is disposed of.

9. I express my gratitude for the able assistance

rendered by the advocate- Ms. Vilasini Balasubramanian representing the respondent no.2. The Legal Services Authority may pay the fees to advocate Ms. Vilasini Balasubramanian as prescribed.

(M. S. KARNIK, J.)