

ORDER BELOW BAIL APPLICATION

B.A. NO.4241/2021 IN C. R. NO.49/2021 (Cyber P.S., West Division)

1. Perused record. Heard both the sides.
2. This is an application under Section 437 for regular bail. It is contended that the accused was arrested in connection with the present offence, which is registered with Cyber Police Station, West Zone, Mumbai, in respect of an offence punishable under Section 354-A, 500 and 506 of Indian Penal Code and Sections 67 and 67-B of Information Technology Act, 2000, alleging that accused using his social media accounts used language causing threat to assault a minor girl by publishing or transmitting material depicting child. He was initially remanded to police custody and now remanded to magisterial custody on 16.11.2021. The main grounds for bail are as -
 - a. That, accused is law abiding citizen, offence not punishable either with life imprisonment or death.
 - b. The alleged post on social media account cannot be considered in isolation as it was posted while replying some other messages. Moreover, applicant is not connected with the said post.
 - c. There transpired nothing in the investigation which will connect with the accused.
 - d. The investigation relating to over is over and there is no need of further detention.
 - e. The accused is meritorious student and engineer by profession. Now pursuing higher studies.
 - f. There is absence of element of *mens rea* and the offence punishable under Section 67-B not made out, besides other grounds.
3. Investigating Officer and Ld. A.P.P. objected to bail mainly on the grounds that accused is residents of Hyderabad, Telangana State. He is expert in concealing his identity and he may not turned up to face trial. Prima facie involvement of the accused noticed in the incidence. There is possibility of tampering, offence is serious and connected with respectable Indian cricket



team member. There is possibility of his involvement in the other same acts, therefore, bail petition shall be rejected.


4. During arguments Ld. Advocate for the accused/applicant, relied on contents of First Information Report and other details submitted that no offence made out as alleged. Majority of the offences are bailable. Investigation is over. He also relied on certain judgments of High Court and on the fact of status of the accused and made submissions that bail is a rule and jail is an exception. No exceptional circumstances exists justifying further detention, therefore, accused shall be released on bail. The submissions of Ld. A.P.P. and Investigating Officer are in tune with their objections.

5. It is alleged that after defeat of the cricket match by India against Pakistan, there was a public out cry and people across India responded aggressively and criticized team members. The accused while responding crossed limits and made some sexually colored remarks against the child of one of the member of Indian Cricket Team. In this regard, Ld. Advocate for the accused submitted that the alleged post is in context of responses of various people and it is singly picked up and offence was registered. It is not directly connected with the cricketer or his family and cannot be read in isolation of other posts.

6. If we perused record and considered the remarks posted and phraseology used in its natural course, it appears that it is made in context of some other posts and may not be directly addressed to the cricketer or his family, even though as social media accounts are inter connected it might have read/received by them. This aspect for the limited purpose of bail cannot be ignored. As such there appears some substance in submission of Ld. Advocate for the accused.

There is also one another important legal aspect. The present offence is registered in respect of offences punishable under Sections 354-A, 500 and



(9) 

506 of Indian Penal Code and Sections 67 and 67-B of Information Technology Act, 2000. Except Section 67-B, all the remaining offences are bailable. If we perused, Section 67-B, it runs as follows and First Information Report and other documents, it can be said that the allegations are not covered by either Sub-Section (a) to (c), and as observed in previous remand order those may be covered by Sub-Section (d) or (e), of the said provision. The plain reading of this provision shows that there must be publishing or transmitting of material depicting children in sexually explicit act, or in particular, if the said provision read in context of these sub-sections there must be facilitation of online abuse of children or recording of such abuse or sexually explicit act with children.

67B. Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form.—Whoever,—

(a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or
(b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or

(c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or

(d) facilitates abusing children online, or

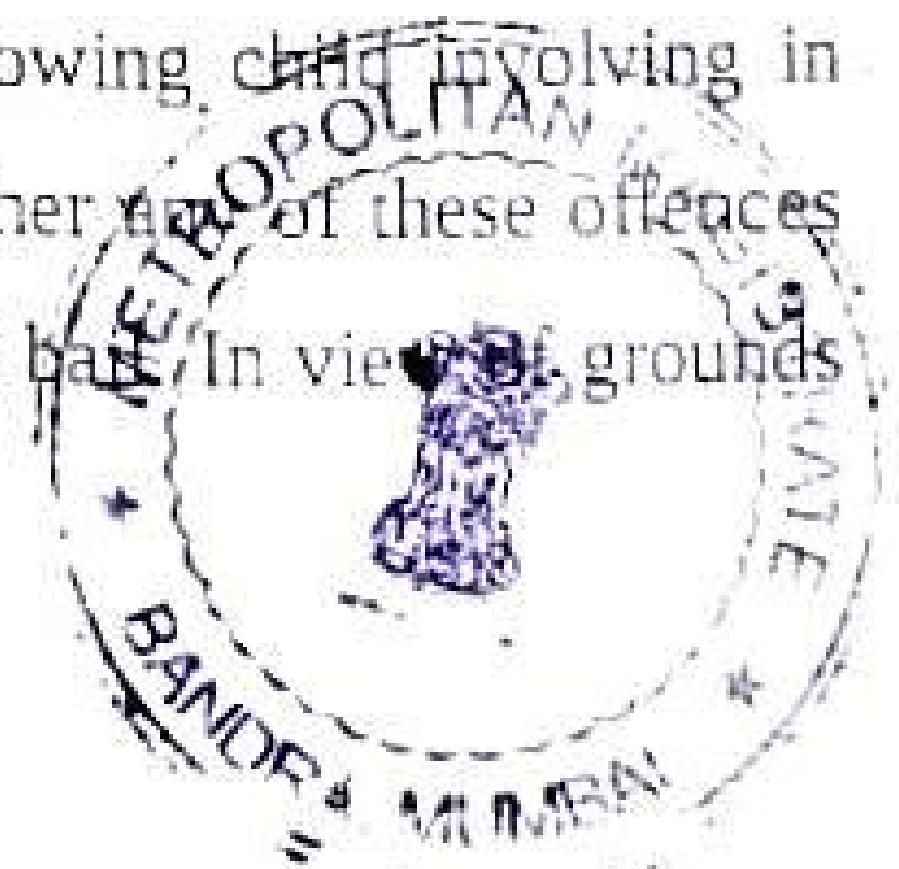
(e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees:

Provided that provisions of section 67, section 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting representation or figure in electronic form—

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting representation or figure is the interest of science, literature, art or learning or other objects of general concern; or

(ii) which is kept or used for bona fide heritage or religious purposes.

8. The contents of the First Information Report and the whole record show that in response to certain social media post accused allegedly mentioned and posted message that he is search of photos of a child for assaulting her. He has not either transmitted or published any material showing child involving in sexually explicit act. Therefore, there is doubt whether any of these offences made out or not? At least for the limited purpose of bail. In view of grounds assigned this aspect cannot be ignored.



9. In the alternative, even if it is presumed that such offence made out the other grounds need due consideration. The majority of the offences are bailable. The offence is triable by this Court itself. The investigation relating to accused person is over. Majority or even whole evidence is already collected and evidence, if any, remained it is in custody of third parties i.e. either available on internet or concerned companies running social media accounts. Therefore, the possibility of tampering is almost nil.

10. The accused is of tender age. He is having a bright academic record and future prospects. He have no criminal antecedents. The apprehension raised by Investigating Officer and Ld. A.P.P. can be addressed by imposing certain conditions. In addition to this law pertaining to bail is now well settled. The bail is a rule and jail is exception. The investigation in this matter is yet to be completed. The record shows that this investigation involves various technical aspects running across country. The collection of whole material and filing of charge-sheet will take substantial time. Merely because the matter is connected with some respectable Indian Cricket Team member, as objected, the prayer cannot be rejected. The pre-trial detention for the reasons discussed above will definitely not justifiable.

11. Considering above discussed legal and factual aspects of the matter, I am of the opinion that bail application needs to be allowed by imposing certain conditions. Therefore, following order -

ORDER

- a. Application is allowed.
- b. Accused is released on bail on his furnishing P.B. of Rs.50,000/- and surety bond of the same amount to be furnished by one or more sureties, out of which one surety should be local.
- c. It is directed that accused shall attend concerned Police Station on every Monday and Thursday for next one month, at sharp 11.00 a.m.



OPERATIVE ORDER

- 12
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 - It is directed that accused shall attend concerned Police Station on every Monday and Thursday for next one month, at sharp 11.00 a.m.
 - Accused shall furnish his detailed address, address of the sureties and proofs thereof alongwith cell numbers of his parents.
 - Permission granted to deposit cash security provisionally for one month instead of furnishing surety bond.



MUMBAI

DATE - 20.11.2021

(KOMALSING RAJPUT)

M.M., 12TH COURT, BANDRA, MUMBAI

True Copy

(Judicial Clerk)
Metropolitan Magistrate
12th Court, Bandra, Mumbai

Applied on 22/11/2021
Ready on 25/11/2021
Charges : 48/-
Delivered on 25/11/2021