IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2893 OF 2024

Gaurav Arjun Patil .. Applicant

Versus

State of Maharashtra .. Respondent

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- Mr. Viral Rathod a/w. Mr. Vishwatej Jadhav, Advocates for Applicant.
- Ms. Hemlata Deshmukh, SPP for Respondent – State.
- Mr. Dormaan J. Dalal, *Amicus Curiae*.

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CORAM : MILIND N. JADHAV, J.

RESERVED ON : APRIL 08, 2025

PRONOUNCED ON : APRIL 15, 2025.

JUDGEMENT:

1. Heard Mr. Rathod, learned Advocate for Applicant; Ms. Deshmukh, learned SPP for Respondent – State and Mr. Dalal, learned *Amicus Curiae* appointed by the Court.

2. Present Application is filed by Applicant – Gaurav Arjun Patil under Section 439 of the Code of Criminal Procedure, 1973 (for short "**Cr.P.C.**") seeking regular bail in connection with First Information Report (for short "**FIR**") No.08 of 2023 registered with Kalachowki Police Station for offences under Sections 3(1)(a)(c), 4, 5(1)(a)(b)(d) and 9 of the Official Secrets Act, 1923 (for short "**the said Act**") readwith Section 120-B of the Indian Penal Code, 1860 (for short "**IPC**"). Investigation in the matter is completed and charge-sheet has been filed before the Sessions Court, Thane which has culminated into

Special Case (ATS) No.142 of 2024. There are total 4 Accused persons arraigned in the crime. Applicant before me is arraigned as Accused No.1 and is incarcerated since 13.12.2023. Accused Nos. 2 and 3 are shown as absconding accused. Accused No.4 is a 25 year old woman hailing from Kaliyaganj, West Bengal, a mobile smart card seller and crypto currency trader who transferred Rs.2,000/- online to the Applicant at the behest of Accused No.3. Accused No.4 after being arrested initially is however dropped from the charge-sheet for want of evidence under Section 169 of Cr.P.C.

3. By order dated 13.03.2025 this Court appointed Mr. Dormaan J. Dalal, Advocate practicing at the bar as *Amicus Curiae* to aid and assist the Court in the present matter.

4. Applicant before me is a 23 year old young offender on the threshold of his life and career with an excellent academic record but having found himself on the wrong-side of the law. Educational qualification of Applicant is that he completed his Certificate Course in Mechanic Diesel from Industrial Training Institute ("ITI"), Jalgaon ITI recognised by National Council for Vocational Training ("NCVT"). Applicant cleared the All India Trade Test for Apprentices in December 2023 with a score of 72.75% pursuant to completion of his apprenticeship of one year in Naval Dockyard, Mumbai from 21.11.2022 to 20.11.2023. During his apprenticeship he received

Rs.7,000/- per month as stipend and he was boarded at the Naval Dockyard Hostel premises in the restricted Naval Dockyard area. Applicant hails from Taluka Pachora District Jalgaon.

5. According to prosecution, period during which alleged offence was committed is from May 2023 to October 2023. Briefly stated, on 13.10.2023 prosecution received intelligence input information from ATS, Thane Unit about the alleged offence. Investigation was carried out. FIR was lodged on 12.12.2023 which is appended at page No.14 of the Application. Applicant was arrested on 13.12.2023 and is in incarceration since then for the past almost 1 year and 4 months. Previous Bail Application of Applicant was rejected by the Special Court 24.05.2024 and hence Applicant is before this Court seeking bail.

6. Mr. Rathod, learned Advocate appearing for the Applicant would submit that it is the prosecution case that during the period between April – May 2023 to October 2023, Applicant got acquainted with Accused No.2 – Arati Sharma and Accused No.3 – Payal Angel, the absconding accused persons on social media platforms Whatsapp and Facebook separately and started chatting with them. He would submit that Accused Nos.2 and 3 represented to Applicant that they both were employed in a shipping company and developed acquaintance and friendship with him and during the course of their

regular and repeatedly consistent chats on Whatsapp and Facebook induced and lured the Applicant to provide information in respect of ships which were docked in the Naval Dockyard area for repairs, location of boats and ships, engine drawings, information about submarines docked in the Naval Dockyard for repairs which information was confidential and sensitive in nature. He would submit that according to prosecution case, Applicant accepted Rs.2,000/- from Accused No.3 online for providing the information which is the alleged money trail. He would submit that Accused Nos.2 and 3 on investigation were revealed to be Pakistani Intelligence Officers / Agents according to the destination of their IP Addresses from where they were communicating with the Applicant impersonating by the pseudo names Arati Sharma and Payal Angel.

6.1. He would submit that if the Whatsapp and Facebook chats which are solely relied upon by prosecution for indictment of Applicant are seen it would be *prima facie* evident that Applicant is completely innocent rather he was honey-trapped by Accused Nos. 2 and 3 into submission. He would submit that sharing of alleged information by Applicant was on the face of record without any bad intention as real background of Accused Nos.2 and 3 was unknown to him and he took them to be mere social media friends. He would submit that if the Whatsapp and Facebook chats are seen it is *prima*

facie evident that Applicant on his own volition never disclosed any information or for that matter any sensitive information and whatever he shared was only in response and reply to questions asked by Accused Nos.2 and 3 to him luring him to provide the said information and at times he refused to share the information as questioned them and also asked them to procure it from google.

6.2. He would submit that allegation of receipt of money namely Rs.2,000/- in lieu of information provided is *prima facie* unsustainable in view of the circumstances in which the said money was received by Applicant due to an exigency and he immediately volunteered to return back the money to Accused No.2 on receiving his stipend – salary in the following month and reiterated his request repeatedly to return the money which is borne out from the record. He would vehemently submit that in any event the paltry amount of Rs.2,000/- can never be ascribed as *quid pro quo* consideration received by Applicant for providing any sensitive information as alleged by prosecution.

6.3. He would submit that Applicant is a young educated boy aged 23 years old; already having been incarcerated for almost 1 year 4 months in prison; having an excellent academic record; having no criminal antecedents whatsoever and his entire life and career is at stake. In that view of the matter, he would persuade the Court to

consider the overall circumstances in which Applicant was led astray and honey trapped by Accused Nos.2 and 3 unintentionally altogether. He would persuade the Court to release the Applicant on bail since his further custody would virtually result in ending his academic life leading him onto the path of invalidation and subjugation when he has an excellent academic career and potential.

7. ***PER CONTRA,*** Ms. Deshmukh learned SPP for Respondent – State in reply to the Application for bail would submit that the Application should be rejected. She would submit that act of the Applicant spread over a period of more than 4 months is such that it has jeopardised national interest and security of the country. She would submit that the act for which the Applicant is indicted is an extremely serious offence when it is revealed in investigation that he shared sensitive and confidential information with Accused Nos.2 and 3 who are yet to be traced, rather they are operatives from foreign soil. She would submit that Applicant was pursuing his apprenticeship in the Naval Dockyard area due to which he had access to restricted area inside the Naval Dockyard where naval ships, boats and submarines were docked for repairs / overhaul, about which he shared information with Accused Nos.2 and 3. She would submit that Applicant was under an oath from committing any act of compromise to endanger security of the country which he has breached by his act

of sharing the names and location of naval ships and boats docked at the harbour alongwith engine drawings on some occasions which has jeopardized national security of the country considering that information of a few ships and boats shared by Applicant were those belonging to the Indian Navy carrying arms and ammunition. She would submit that act of Applicant is unpardonable especially when he has admittedly received and accepted Rs.2,000/- from one of the accused persons and knowingly shared confidential information with them.

7.1. She has referred to and relied upon the decision of the Supreme Court in the cases of ***The State Vs. Jagjit Singh*** [1] and ***State Vs. Jaspal Singh Gill*** [2] and decision of the Delhi High Court in the case of ***Jasbir Singh Vs. The State***[3] to contend that indictment of the Applicant under the provisions of the said Act in the present case needs to be upheld even at the primary stage of grant of bail in the larger interest of the nation considering gravity of the offence committed by Applicant of sharing sensitive and confidential information relating to names, location and details of ships and boats alongwith drawings with the Accused Nos.2 and 3 who are operators from foreign soil.

1 AIR 1962 SC 253
2 AIR 1984 SC 1503
3 (1984) 7 DRJ 94

7.2. She would submit that passing on of such information by Applicant is an act so as to endanger security of the nation and *prima facie* material placed on record is such that the nature and seriousness of the offence, character of the evidence and larger interest of the public and the nation if considered would dis-entitle the Applicant to seek his release on bail. Hence, she would pray for rejection of Bail Application.

8. Mr. Dalal, learned *Amicus Curiae* appointed by the Court has filed his written submissions alongwith citations and copies of the relevant statutory provisions and has made the following submissions:-

8.1. He would submit that in the present case entire case of prosecution is *prima facie* based upon the Whatsapp chat messages and Facebook chat messages appended at page Nos.84 to 190 between the Applicant and Accused Nos.2 and 3 respectively. He would submit that it is crucial to note that it is the Accused Nos.2 and 3 who struck an acquaintance with Applicant through social media platforms by sending him a friend request which he accepted. He would submit that if the said Whatsapp and Facebook chats between Applicant and Accused persons are seen it is *prima facie* evident that Accused Nos.2 and 3 posed several questions to the Applicant in mono-syllables and short sentences comprising of not more than 2 to 3 words by drawing him into friendship by falsely representing to him that they were

young girls working for a shipping company in Dubai and UAE and from that perspective lured him into disclosing information about the ships which were docked in the Naval area / Naval Dockyard for repairs / overhaul on those days. He would submit that there is nothing *prima facie* incriminating in the said chats which would go to show that Applicant on his own volition provided the alleged information or that he was recruited by foreign agents or was on their pay-roll, rather the Applicant always answered their questions by providing the information as observed by him without even realizing the reason for asking about the same.

8.2. He would make one important submission for consideration at the bail stage since charge is not framed and trial has not commenced namely that intelligence input information was received by the ATS, Thane Unit on 13.10.2023 about Applicant who was a trainee apprentice undergoing his apprenticeship in Naval Dockyard, Mumbai having established contact with foreign nationals and he transmitting to them confidential and sensitive information in respect of restricted areas of the Naval Dockyard. FIR was filed on 12.12.2023. The FIR states that prior thereto on 01.11.2023 mobile phone of Applicant was seized and investigated with his permission thereby clearly indicating that he fully co-operated with the investigation, he did not delete any information or conceal any information from

prosecution. Learned *Amicus Curiae* would argue that *prima facie* there is nothing placed on record or emanating from record compiled in the charge-sheet to suggest that Applicant deleted any data from his mobile phone or his facebook account rather he co-operated fully with the investigation, disclosed the username and password of his Facebook account, produced his mobile phone before the authorities which is seized and the entire information relating to Whatsapp chats and Facebook chats has been retrieved from archive and is part of the charge-sheet.

8.3. He would submit that even according to the charge-sheet and investigation done, it is stated therein that Applicant received the friend request from Accused Nos.2 and 3 which he accepted and thereafter he started communicating with them. He would submit that subsequently in investigation it has come on record that Accused Nos.2 and 3 have communicated through an IP address originating in Pakistan and UK which is *prima facie* clear from the documentation placed in the charge-sheet at page Nos.423, 424, 461, 462, 473, 474, 519 and 521. However he would submit that on the basis of the Whatsapp and Facebook chats it is *prima facie* seen that Applicant had no knowledge about the fact that Accused Nos.2 and 3 were impersonating themselves. Rather, he would submit that whether or not the Applicant knew Accused nos.2 and 3 or had nexus with them

would be a question of trial.

8.4. He would submit that prosecution charge in the charge-sheet that Applicant colluded with Accused Nos.2 and 3 and therefore committed an offence under Section 120-B of IPC would once again be a matter of trial considering that ingredients of Section 120-A which defines 'criminal conspiracy' have not been met with *prima facie* on reading the Whatsapp and Facebook chats.

8.5. On the issue of money trail alleged by prosecution and money having been received by Applicant, he would submit that it is seen that co-accused from whose account the Applicant received Rs.2,000/- on 27.06.2023 has not been charge-sheeted for want of evidence under Section 169 of the Cr.P.C. which is factor to be taken into account for grant of bail. That apart, he would submit that alleging receipt of Rs.2,000/- as consideration for *quid pro quo* to supply the alleged information would once again be the subject matter of trial.

8.6. He would also persuade the Court to consider applicability of the provisions of the Apprenticeship Act, 1961 and more specifically Section 17 thereof pertaining to matters of conduct and discipline of trainees undergoing apprenticeship to be governed by Rule 11 of the Central Civil Service Conduct Rules, 1964. He would submit that Rule 11 deals with unauthorised communication of information and extent

of application of this Rule would once again be a question of trial.

8.7. On the aspect of information alleged to be confidential which was shared by the Applicant, he would submit that the extent of classification and confidentiality of the alleged information are all questions of trial.

8.8. In support of his above submissions, he has referred to and relied upon the following decisions of the Supreme Court and various High Courts:-

(i) ***State Vs. Captain Jagjit Singh***[4];
(ii) ***Nishant Vs. State of Uttar Pradesh***[5];
(iii) ***Rohit Kumar vs. State of Haryana***[6] and
(iv) ***Sambhaji Lal Surve Vs. Central Bureau of Investigation***[7].

8.9. In view of the above citations, he would submit that it would be unsafe to straight away presume that the import of Sections 3, 4 and 5 of the said Act would stand attracted in the facts of the present case in the context of the presumption to be drawn in that behalf which can only be done at the trial.

8.10. He would therefore submit that from reading of the principles set out in the aforesaid judgements and applying the same to the facts of the present case, considering that Applicant has already

4 1960 SCC OnLine 2
5 2023 SCC OnLine Bom 2934
6 2024 SCC OnLine P&H 7551
7 2009 SCC OnLine Del 755

completed his apprenticeship and is no longer associated with the Naval Dockyard in any capacity, considering the evidence garnered by the prosecution already being part of the charge-sheet which cannot be tampered with, considering Applicant's young age and academic credentials, no likelihood of Applicant re-offending, Applicant having no antecedents to his discredit the Court can consider Applicant's case for bail and release him on bail by imposing appropriate conditions.

9. I have heard the learned Advocates at the bar and the learned *Amicus Curiae* and with their able assistance perused the record of the case and various citations referred to and relied upon by them for consideration of the present Bail Application.

10. At the outset the case of prosecution as against Applicant and the relevant statutory provisions for his indictment under the said Act need to be seen. Applicant is charged under Sections 3(1)(a)(c), 4, 5(1)(a)(b)(d) and 9 of the said Act. Sections 3(1)(a)(c), 4, 5(1)(a)(b)(d) and 9 of the said Act read thus:-

> *"**3. Penalties for spying.—** (1) If any person for any purpose prejudicial to the safety or interests of the State—*
>
> *(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or*
>
> *(b) makes any sketch, plan, model, or-note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or*
>
> *(c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended*

to be, directly or indirectly, useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States;

he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years.

*(2) On a prosecution for an offence punishable under this section 2***, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to any thing in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document, information, code or pass word shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State.*

4. Communications with foreign agents to be evidence of commission of certain offences.— *(1) In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with a foreign agent, whether within or without India, shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained-or attempted to obtain information which is calculated to be or might be, or is intended to be, directly or indirectly, useful to any enemy.*

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provision,—

(a) a person may be presumed to have been in communication with a foreign agent if—

(i) he has, either within or without India; visited the address of a foreign agent or consorted or associated with a foreign agent, or

(ii) either within or without 4[India], the name or address

of, or any other information regarding, a foreign agent has been found in his possession, or has been obtained by him from any other person;

(b) the expression "foreign agent" includes any person who is or has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power, either directly or indirectly, for the purpose of committing an act, either within or without India, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without India, committed, or attempted to commit, such an act in the interests of a foreign power;

(c) any address, whether within or without India, in respect of which it appears that there are reasonable grounds for suspecting it of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, may be presumed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent.

5. Wrongful communication, etc., of information.— *(1) If any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which is likely to assist, directly or indirectly, an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under Government, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under Government, or as a person who holds or has held a contract made, on behalf of Government, or as a person who is or has been employed under a person who holds or has held such an office or contract—*

(a) wilfully communicates the code or pass word, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorised to communicate it or a Court of Justice or a person to whom it is, in the interests of the State his duty to communicate it; or

(b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; or

(c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully

fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or pass word or information; he shall be guilty of an offence under this section.

(2) If any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.

(3) If any person having in his possession or control any sketch, plan, model, article, note, document or information, which relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section.

(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

***9. Attempts, incitements, etc.**— Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment, and be liable to be proceeded against in the same manner as if he had committed such offence."*

11. In the case of ***Sambhajilal Surve*** *(supra)* Applicant therein working as Joint Director (Air Defence) was suspected by Air Force Intelligence of leaking vital information and a pen-drive was seized from him which was found to contain classified information. In that case interpretation of the provisions of the said Act by the Delhi High Court was gone into in paragraph Nos.21 to 23 of the said decision. I find it relevant to quote the said paragraphs which are *prima facie* relevant to consider the facts of the present case, primarily because the Delhi High Court in that case granted bail to the accused person

therein. Paragraph Nos.21 to 23 deal with the interplay, application and interpretation of Sections 3 and 5 of the said Act and read thus:-

> *"The OSA Provisions*
>
> ***21.*** *Section 3 OSA itself admits of two possible kinds of offences; one which attracts the more severe punishment of 14 years and the other with a lesser punishment of 3 years. Where the offence is in relation to affairs of defence involving the integrity and security of the country, the greater punishment stands attracted. However, what is important for the purposes of Section 3(1)(c) is that the accused should obtain, collect record or publish or communicate to any other person "any secret official code or password or other document or information" and the intention of such obtaining and collecting of information has to be "for any purpose prejudicial to the safety or interest of the State." In order to attract the offence under Section 3(1)(c) OSA it has to first be shown that there was an actual passing on of the sensitive or 'classified' information. For the more severe punishment to be attracted it has to be shown that what was passed on relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India or the security of the State and is committed in relation to a defence establishment. Whether the information is classified or not would be a matter of certification by the competent authorities and further subject to such opinion being tested at the trial. At the initial stage for the grant of bail, it has to be only seen if the information has been certified to be a classified one and it has been shown to have been passed on by the accused to any other person.*
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> ***22.*** *Under Section 3(2) OSA, in order to attract the offence under Section 3(1) it is not necessary to show that the accused was guilty of any particular act tending to show a purpose prejudicial to the interest of the State. This can be presumed if it appears "from the circumstances of the case or his conduct or his known character as proved" "that his purpose was a purpose prejudicial to the safety or the interests of the State." Such presumption therefore hinges on the prosecution "proving" the known character of the accused or his conduct. This in turn requires the trial to be gone through. It would be unsafe to straightaway presume, without even charges being framed, that Section 3(2) stands attracted to the facts of the case. The decision in* ***Jaspal Singh*** *has to be understood in that context of the presumption to be drawn in that behalf at the conclusion of the trial.*
>
> ***23.*** *On the other hand, when Section 3(1) OSA is compared with Section 5 OSA, it appears that when such information found in possession of a person who is "entrusted" with it "in confidence" by virtue of his "holding office under (Government)" and such person passes on such information to any person other than a*

> *person to whom he is authorised to communicate, then the punishment is for a term which may extend to 3 years. The court when considering the question of grant of bail to a person who at the time of the commission of the alleged offence was working in an official capacity in government, has to satisfy itself prima facie as to which of the offences is attracted."*

12. In the present case it is primarily seen that the Applicant has fully cooperated with the investigation, rather each and every message communicated via Whatsapp and Facebook between him and Accused Nos.2 and 3 has been retrieved on Applicant's participation in the investigation. At the *prima facie* stage this is of critical importance because the Applicant could very well have deleted the said Whatsapp and Facebook messages exchanged with the other co-accused persons but nothing of that sort is done by him, neither there is anything on record to show that he has deleted any data and infact the chat with Accused No.2 on Whatsapp was archived. Similarly, the Facebook chat messages with Accused No.3 were also shared by him fully with the prosecution agency. The panchnama dated 01.11.2023 filed by the prosecution and appended at page No.81 of the Application *prima facie* records that on preliminary investigation of the Whatsapp messages and Facebook chats with Accused Nos.2 and 3 it was observed that Applicant received the friend request from Accused No.2 and 3 to which he had responded.

13. It is *prima facie* seen that the entire fulcrum of prosecution case to deny bail to Applicant is based on the submission that the

alleged information shared by Applicant was classified and confidential. I have perused the Whatsapp and Facebook chat messages exchanged between the accused persons appended at page Nos.84 to 163 between 18.05.2023 to 30.10.2023 between Accused No.2 and Applicant and the Facebook messenger chats with Accused No.3 appended at page Nos.164 to 190 between 05.05.2023 and 30.10.2023. *Prima facie* it is seen that Applicant has shared names of certain ships docked at the harbour / dockyard and weather conditions with Accused No.2 between 25.05.2023 to 02.06.2023 when she made him believe that she was working for a shipping company in Dubai and was interested in knowing which ships were docked at the port for repairs on those dates and the Applicant has innocently responded to her by providing her the names of the ships. Thereafter it is seen that on 13.06.2023 when Accused No.2 asked him to provide information about presence of a submarine at the Dockyard, the Applicant flatly refused and did not provide the said information. This enures to the benefit of the Applicant. Then it is seen that on 19.06.2023 the Accused No.2 attempted to lure the Applicant with a job offer in a shipping company after his apprenticeship which he flatly refused. Apart from the above, the other information emanating from the Whatsapp chat with Accused No.2 pertains to sharing of 3 drawings, nature of work of Accused persons, discussion on movies and other general discussion.

14. Whether the aforementioned messages divulging the names of the ships docked at the dock for repairs shared by Applicant is classified information and to what extent would undoubtedly be a matter for trial. Only on one occasion an engine drawing which was drawn by Applicant as part of his practical project was shared by him when the co-accused persons persisted with him to share the same. *Prima facie* on the basis of entirety of the Whatsapp chats with Accused No. 2, appears that Applicant was enticed and lured into talking and providing information but apart from sharing information about ship names and location in the dock area and weather, he has not provided any other information rather he refused to give any other information. It is seen that there is no monetary consideration involved in the entirety of the Whatsapp chats with Accused No.2.

15. In so far as communication with Accused No.3 is concerned, it is *prima facie* seen that she portrayed herself to be employed with a global shipping and logistics LLC company based in the UAE and having its branch in Tamil Nadu in India. It is seen that with her also Applicant exchanged details of names of ships and their movement in and out of the Naval Dockyard area and submarine information which is seen from page Nos.164 to 167, but the Applicant has on some occasions questioned her as to why she could not retrieve the information from google where it was available. With Accused No.3,

Applicant is seen to have interacted about information about ship movement and servicing of engines and also about his financial situation relating to his study, course and expenditure, upon which at one point of time she offered him money. The monetary consideration of Rs.2,000/- is seen received by Applicant from the Accused No.4 to which he has responded about returning the same once his monthly stipend for the next month was remitted in his bank account. Thereafter, Applicant has pursued to return the Rs. 2000/- when he received his stipend, but it was not taken by Accused No. 3. From reading of the exchange of chats/messages with Accused No.3 appended at page Nos.188 to 189, it is seen that Accused No.3 was pressing the Applicant very hard to share information relating to docking of ships at the Naval Dockyard to which the Applicant replied to her that it was not possible for him to provide such information since the situation in the naval dockyard had become strict and it was not possible for him to visit the dockyard to provide the names and details of the ships docked to her. It is also seen from the chats that he has infact stated that he was punished for two days since he had violated the Rules as he had entered the restricted area alongwith another friend to take a look at the ships which were docked at the Naval Dockyard. It is further seen that on 25.08.2023 Applicant addressed a message on Facebook to Accused No.3 stating that he would log out from his Facebook, Instagram, Snapchat and all social

media apps/accounts which is preceded by the exchange of messages that he was punished for violating the rules as he had been spotted by the OIAC in the restricted Naval Dockyard Area, pursuant to which it is seen that he has logged out. It is not the prosecution case that Applicant entered the restricted and prohibited area surreptitiously for unearthing the information being elicited from him. The Applicant by virtue of his apprenticeship as a Diesel Mechanic used to enter the restricted area without his mobile phone since as per rule the mobile phone had to be deposited in safe custody before entering. What is *prima facie* observed from the chats is that since waking up in the morning upto the time of going to bed, both accused Nos.2 and 3 kept the Applicant engaged and followed the same routine whenever the Applicant was not inside the restricted Naval Dockyard area. During this routine Applicant was enticed by the two operators by asking and sharing a lot of personal questions which the Applicant responded to and in the course of which he started divulging the details / names of the ships which were docked which he saw during his daily routine apprenticeship visits without realising the reason for such repeated questioning which was very intelligently camouflaged by the Accused Nos. 2 and 3.

16. From the communication which is *prima facie* seen and the fact that it has been retrieved in its entirety, I would like to refer to the

decision of the Bombay High Court, Goa Bench in the case of ***John Fernandes Vs. State of Goa & Anr.***[8] wherein while deciding an Application for bail in somewhat similar facts and circumstances and after referring to several decisions of the Supreme Court, the learned Single Judge summarized the parameters required to be taken into consideration for deciding a Bail Application in paragraph No.10 of the said decision which is delineated herein under:-

> *"10. Be that as it may, the law as regards grant or refusal of bail is well settled in that the Court granting bail in a non bailable offence should exercise its discretion in a judicial manner, and not as a matter of course and though at the stage of granting of bail a detailed examination of evidence and elaborate documentation is not required to be gone into nevertheless there is need to indicate reasons for prima facie concluding why bail was being granted or rejected particularly in cases where an accused is charged of having committed a serious offence and any order devoid of any such reason, however brief they may be, would suffer from non application of mind. Giving reasons is different from discussing the merits or demerits of the case. The parameters required to be taken into consideration for the grant of refusal or refusal of bail remain the same from the case of State v. Captain Jagjit Singh(a three Judge decision of the Apex Court reported in AIR 1962 SC 253, relied upon by the learned Public Prosecutor Shri C. A. Ferreira) to the case of Gurcharan Singh v. State(AIR 1978 SC 179) relied upon by learned Counsel Shri Naik, to the case of Prahlad Singh Bhati v. N.C.T. Of Delhi(2001 DGLS(Soft) 503) as well as Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav(2004 DGLS(Soft) 159) relied upon by Shri Ferreira, and the said considerations could be summarized as follows:-*
>
> *a). The gravity of the offence in relation to the severity of punishment involved in case of conviction;*
>
> *b). Nature of evidence to support the same;*
>
> *c). Prima facie satisfaction of the Court in support of the charge;*
>
> *d). The character, behaviour, means and standing of the accused with reference to the victim and the witnesses.*
>
> *e). Reasonable apprehension of the witnesses being tampered*

8 Cri. Misc. Application (Bail) No.60 of 2010 decided on 30.04.2010

with .

f). The possibility of the accused jumping bail and fleeing from justice.

g). Likelihood of repeating the offence.

h). Likelihood of jeopardizing his own life being faced with

possible conviction.

i). Larger public interest or the interest of the State.

j).History of the cases as well as of its investigation and other relevant grounds which cannot be exhaustibly set out."

17. I also find it relevant to refer to the decision of the Supreme Court in the case of ***P. Chidambaram Vs. Central Bureau of Investigation***[9], which has also in paragraph Nos.21 to 25 detailed the parameters to be taken into consideration while deciding bail which read thus:-

"***21.*** *The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:*

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

9 (2020) 13 SCC 337

22. *There is no hard-and-fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner. At this stage itself, it is necessary for us to indicate that we are unable to accept the contention of the learned Solicitor General that "flight risk" of economic offenders should be looked at as a national phenomenon and be dealt with in that manner merely because certain other offenders have flown out of the country. The same cannot, in our view, be put in a straitjacket formula so as to deny bail to the one who is before the court, due to the conduct of other offenders, if the person under consideration is otherwise entitled to bail on the merits of his own case. Hence, in our view, such consideration including as to "flight risk" is to be made on individual basis being uninfluenced by the unconnected cases, more so, when the personal liberty is involved.*

23. *In Kalyan Chandra Sarkar v. Rajesh Ranjan [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977] , it was held as under : (SCC pp. 535-36, para 11)*

> *"11. The law in regard to grant or refusal of bail is very well-settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:*
>
> > *(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
> >
> > *(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
> >
> > *(c) Prima facie satisfaction of the court in support of the charge.*

24. *Referring to the factors to be taken into consideration for grant of bail, in Jayendra Saraswathi Swamigal v. State of T.N. [Jayendra Saraswathi Swamigal v. State of T.N., (2005) 2 SCC 13 : 2005 SCC (Cri) 481] , it was held as under : (SCC pp. 21-22, para 16)*

> *"16. … The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in State v. Jagjit Singh [State v. Jagjit Singh, AIR 1962 SC 253 : (1962) 1 Cri LJ 215] and Gurcharan Singh v. State (Delhi Admn.) [Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118 : 1978 SCC (Cri) 41] and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case."*

25. *After referring to para 11 of Kalyan Chandra Sarkar [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977] , in State of U.P. v. Amarmani Tripathi [State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] , it was held as under : (Amarmani Tripathi case [State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] , SCC p. 31, para 18)*

> *"18. It is well-settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. State (NCT of Delhi) [Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280 : 2001 SCC (Cri) 674] and Gurcharan Singh v. State (Delhi Admn.) [Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118 : 1978 SCC (Cri) 41]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused."*

18. Thereafter attention is also drawn to the two judgments / case laws on bail with respect to offence under the said Act which is

the subject matter of the present case before the Court namely ***Nishant Vs. State of Uttar Pradesh*** (supra) and ***Rohit Kumar*** (supra).

19. From a *prima facie* consideration of the material on record and the Applicant having co-operated with the investigation in its entirety as also considering the *prima facie* nature of the information shared by the Applicant emanating from the Whatsapp and Facebook chats / messages and applying the principles set out in the judgements and citations referred to hereinabove the following situation emerges.

20. The Applicant is no longer in service of the Indian Navy in any capacity and his phone and laptop is already seized therefore the evidence retrieved cannot be tampered with. There is no likelihood of him repeating the offence. Since he has no access to information, the interest of the State would not be at risk. He has no prior criminal history to his discredit. There is no apprehension of he threatening or tampering with witnesses. The presence of the accused can be secured at the time of trial and it is unlikely that he will abscond. The accused is a 23 year old student and it is *prima facie* evident that he was honey trapped. Lastly whether the alleged information was certified as classified, secret, confidential would be a question of trial. Applicant has been incarcerated since 13.12.2023 i.e. for almost 16 months. Charge is yet to be framed and trial is yet to commence. Hence the ignominy of the Applicant suffering incarceration in prison pending

trial is clear and that too for an uncertain period of time.

21. In view of the above observations and findings and considering facts in the present case, it is *prima facie* seen that Applicant was lured into a honey trap by Accused Nos.2 and 3 which is clearly evident form reading of the material placed on record. Honey trap is a covert technique used in intelligence operations which involves use of seduction or sexual appeal to extract information, gain leverage or manipulate individuals for various purposes. Honey trap is more insidious and involves a long term deception which is *prima facie* seen to have been attempted by the Accused Nos. 2 and 3 in the present case with the Applicant over a period of three to four months. *Prima facie* in the present case, the Accused No.2 shared her photographs with the Applicant at the inception in May 2023 which were liked, commented and complimented by the Applicant as “beautiful” and “savvy”. That was the first step of striking acquaintance with the Applicant. *Prima facie* in the present case, the entire conversation by Accused Nos.2 and 3 at the inception stage was more on focusing and drawing the Applicant into friendship rather enticing him without arousing any suspicion in his mind and it *prima facie* appears that Applicant fell prey for the same. The present case is a classic case of honey trap which today’s youth should be beware of. Honey trap typically involves an individual often an intelligence

agent who assumes a false identity and cultivates a relationship with the target (in the present case the Applicant). Such relationship is built on the foundation of trust and intimacy exploiting the target's vulnerability and desires which is *prima facie* seen from the Whatsapp and Facebook chats in the present case. A honey trapper may use charm, attractiveness or emotional connection to extract sensitive information from the target (which is *prima facie* observed in the present case) or even coerce the target into doing specific actions. The success of a Honey trap operation relies on manipulating human psychology and emotions wherein the target may feel a strong emotional bond making it difficult for him to question the motive behind the relationship and such emotional entanglement can cloud his judgement leading the target to divulge in confidential information or engage in compromising activities. Generally the honey trapper entices the target into a false relationship / friendship which may or may not include physical relationship or involvement but through which they can glean information or influence the target. In the present case both Accused Nos.2 and 3 operated in tandem on two different social media platforms with Applicant but nature of communication and information sought was identical or common. Honey trap is a social media enabled crime wherein fake profiles are created on social media platforms with beautiful and enticing images to initiate and establish contact with the target / victim. *Prima facie*

such is the present case before the Court and it is the duty of the Court to sound an alarm bell to the youth of the country and to the Society at large to beware of the warning signs of Honey trapping which is initiated through unsolicited communication from someone you don't know or haven't previously interacted with as is the present case. A lot of cyber-crimes and extortion related offences are happening nowadays by using the same *modus operandi.* The citizens of this country and more specifically the youth who are hooked onto the social media platforms must be alert particularly if a message they receive on social media is flattering or overly complimentary from an unsolicited communication or a person unknown as it may be a sign of honey trapping. This is particularly so because honey traps often involve emotional manipulation by playing on the target by flattering the fears and desires of the target to elicit sensitive information over a period of time. Purpose of the bail court is also to caution the Society at large especially the youth who are overly exposed to the inherent social media world lest they get trapped in an unwanted and irreversible situation like that of the Applicant before the Court.

22. The Applicant was a young boy aged about 21 years when he received the friend request which is quite common in these days. His academic credentials and future prospects would persuade me to consider his case for grant of bail. He has no antecedents. If the

situation would be considered in a vacuum, the factors having a bearing in the Court's mind would be distinct from what it is now; this is because the Applicant is at the threshold of his career and adult life having an excellent academic background, hence at this stage subjecting him to further custody would make it highly likely that he would be entangled in the vicious cycle and downward spiral of criminality making him a hardened criminal posing a future perpetual threat to the society. Hence every semblance of a chance in this direction should be taken by the Court.

23. In this context, I would like to draw attention to the judgement and conclusion arrived at by the learned Single Judge of the Delhi High Court in the case of ***Siddharth Jain v. Shaheed Sukhdev College of Business Studies***[10]. This decision of the Single Judge of the Delhi High Court was comprehensively upheld by the Division Bench of the Delhi High Court by order dated 23.05.2016 reported in ***2016 SCC OnLine Del 3438***. In that case before the Court, the Petitioner was a young adult approximately 20 years of age who faced an order of the Disciplinary Committee of his college having recommended him to be debarred for two years from entering the college premises, attending classes, from participation or representing the college on any of the activities or appear in university / college examinations due to serious misdemeanors. The Principal of the college reduced the period

10 2015 SCC Online Del 1342.

of debarment to 1 year. In this background the Petitioner approached the Court. While dealing with the above case and the Petitioner's misdemeanor, the Court while referring to the provisions of the Probation of Offenders Act, provisions of the IPC and various decisions rendered by the Supreme Court held that the Court has very wide power to deal with an offender who is under 21 years of age and if found guilty of having committed an offence.

23.1. Before me is the case of an undertrial, who is also on the threshold of adulthood. In this context, the Delhi High Court extracted the observations of the Supreme Court in paragraphs Nos.4 and 7 of the judgement in the case of ***Ishar Das v. State of Punjab***[11] which would read as under:-

> *" 4. There is, in our opinion, considerable force in the stand taken on behalf of the appellant by his learned counsel and we find ourselves unable to accede the submission made on behalf of the respondent State. The Probation of Offenders Act received the assent of the President on May 16, 1958 and was published in the Gazette of India, dated May 19, 1958. According to sub section (3) of Section 1 of that Act, it shall come into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different parts of the State. The fact that the Act was in force in the State of Punjab before the sample of ice cream was taken from the appellant has not been disputed before us. Section 3 of the Act gives power to the court to release certain offenders after admonition. According to that section, where any person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Penal Code, 1860 or any offence punishable with imprisonment for not more than two years, or with fine, or with both under the Penal Code, 1860 or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then notwithstanding anything*

11 1973 (2) SCC 65.

contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4, release him after due admonition. The relevant part of sub-section (1) of Section 4 and sub-section (1) of Section 6 of the Act read as under:

> *"4. (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour.*
>
> *6. (1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including he nature of the offence and the character of the offender, it would not be desirable to deal with him under Section 3 or Section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing go."*
>
> *The Probation of Offenders Act, as observed, by Subba Rao, J. (as he then was) speaking for the majority in the case of Rattan Lal v. State of Punjab [AIR 1965 SC 444 : (1964) 7 SCR 676 : (1965) 1 SCJ 779 : (1965) 1 Cri LJ 360] is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. Broadly stated, the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years absolute discretion is given to the court to release them after admonition or on probation of good conduct, subject to the conditions laid down in the appropriate provisions of the Act, in the case of offenders below the age of 21 years, an injunction is issued to the court not to sentence them to imprisonment unless it is satisfied that, having regard to*

> *the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under Sections 3 and 4 of the Act.*

5. ...

6. ...

7. The question which arises for determination is whether despite the fact that a minimum sentence of imprisonment for a term of six months and a fine of rupees one thousand has been prescribed by the legislature for a person found guilty of the offence under the Prevention of Food Adulteration Act, the court can resort to the provisions of the Probation of Offenders Act. In this respect we find that sub-section (1) of Section 4 of the Probation of Offenders Act contains the words "notwithstanding anything contained in law for the time being in force". The above non obstante clause points to the conclusions that the provisions of Section 4 of the Probation of Offenders Act would have overriding effect and shall prevail if the other conditions prescribed are fulfilled. Those conditions are: (1) the accused is found guilty of having committed an offence not punishable with death or imprisonment for life, (2) the court finding him guilty is of the opinion that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct and (3) the accused in such an event enters into a bond with or without sureties to appear and receive sentence when called upon during such period not exceeding three years as the court may direct and, in the meantime, to keep the peace and be of good behaviour. Sub- section (1) of Section 6 of the abovementioned Act, as stated earlier, imposes a duty upon the court when it finds a person under 21 years of age, guilty of an offence punishable with imprisonment other than imprisonment for life, not to sentence him to imprisonment unless the court is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it would not be desirable to deal with him under Section 3 or 4 of the Act but to award a sentence of imprisonment to him. The underlying object of the above provisions obviously is that an accused person should be given a chance of reformation which he would lose in case he is incarcerated in prison and associates with hardened criminals. So far as persons who are less than 21 years of age are concerned, special provisions have been enacted to prevent their confinement in jail at young age with a view to obviate the possibility of their being subjected to the pernicious influence of hardened criminals. It has accordingly been enacted that in the case of a person who is less than 21 years of age and is convicted for an offence not punishable with imprisonment for life. He shall not be sentenced to imprisonment unless there exist reasons which justify such a course. Such reasons have to be recorded in writing."

23.2. The Court held that the rationale behind a different regime being followed world over *vis-a-vis* young offenders is to prevent recidivism which can be prevented if young offenders are dealt with appropriately with due sensitivity at an early age. Court also referred to a range of different sentences *qua* young offenders depending upon gravity of offences and age of offenders. The Court held that while dealing with a young offender, every attempt should be made to ascertain whether the sentencing disposition could be tailored as long as it is consistent with other sentencing principles so as to promote reformation and lead to rehabilitation of the offender. The Court referred to the facet of the doctrine of proportionality often used by our Courts in such matters.

24. Considering Applicant's young age and academic pursuits and if he is enlarged on bail Court is hopeful that Applicant's family will undoubtedly do their duty to make every effort and attempt to reform and aid the Applicant in leading a reformed life while on bail rather than keep him in prison and expose him to criminal outlook and life in prison. On the flip side, if a chance is given to the Applicant because of his young age by enlarging him on bail, there is a possibility that he will be remorseful and repent in retrospect for his actions. This is a chance required to be taken by the Court because punishment has to be believed to be inflicted for a reformative result

rather than being punitive in nature.

25. Undoubtedly the trial will determine the punishment for the offence. While considering Bail Application in such facts, Court feels that reform and rehabilitation of the under trial accused needs to be considered especially when age of the accused is young so that the accused gets an opportunity / or is given an opportunity to reform, rehabilitate and earn his livelihood honorably from the perspective of social integration. This is a chance which the Court must take considering the young age of accused. By considering this Court is not stamping approval of any of the actions of Applicant regarding the alleged crime in question. Court is also equally conscious of the nature of the offence. The age of the Applicant is very young. If the Applicant is incarcerated in prison further, there is every possibility that he might loose faith in the institution and society at large and may tread the path of criminality or would waste his life. Incarceration in prison statistically shows that it exposes many youth to abuse.

26. There are several harms of incarceration which are inflicted disproportionately on the youth. This is the reason why Court feels that any / every semblance of a chance towards a reformative approach in punishment should be adopted, especially in the case of young offenders. Hence every opportunity or to that extent risk should be constructively taken by the Court in the case of young

offenders – accused before committing such accused to further custody and give such accused an opportunity to become a good citizen in the Society. These observations are only in the view of the young age of the Applicant before me and it is only a means to explore an alternative to incarceration so that the Applicant can become a good citizen.

27. Considering the aforementioned *prima facie* observations, Applicant's incarceration for the past almost 1 year and 4 months in prison pending trial, considering his young age and incarceration likely to worsen his likelihood of success in every sphere of society as it will expose him to abuse, I am inclined to accept the submissions made by Mr. Dalal, learned *Amicus Curiae* and am of the opinion that Applicant can be released on bail. Concerns expressed by the prosecution can be considered by imposing appropriate conditions. Hence, Application stands allowed and the Applicant is enlarged on bail on the following terms and conditions:-

(i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;

(ii) Before his actual release from jail, Applicant shall furnish on Affidavit / Undertaking his address where he proposes to reside and with whom after his release

from jail alongwith all details, phone numbers to the concerned Police Station and also to the trial Court until the completion of trial;

(iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

(iv) Applicant shall attend the trial Court on first Saturday of every month between 11.00 a.m. and 01.00 p.m. to mark his presence. If the first Saturday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

(v) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

(vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court; Applicant shall deposit his passport, if any, with the Trial Court within 2 weeks from his release from prison;

(vi) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

28. It is clarified that the observations made in this order are limited for the purpose of granting Bail only. They shall not be construed as observations on merit. The trial shall be adjudicated on the strength of evidence led by parties and strictly on evidence being uninfluenced with any of the *prima facie* observations made herein above in this order.

29. This Court appreciates the able and valuable assistance rendered by Mr. Dormaan J. Dalal, *Amicus Curiae* appointed by the Court for adjudicating the present Bail Application.

30. Bail Application No.2893 of 2024 is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY TRAMBAK UGALMUGALE

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