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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 402 of 2015

IN

CRIMINAL APPEAL No. 340 OF 2015.

Ashish Dnyaneshwar Channurwar ..Applicant/Appellant.

Vs

State of Maharashtra ..Respondent.

Mrs Nasrin Ayubi, appointed Advocate for the Applicant.

Mrs Anamika Malhotra, APP for the State.

CORAM : A.R.JOSHI,J

DATE : 8th July, 2015

P.C. :

1) Heard learned appointed Advocate for the applicant in this application for bail during the pendency of the appeal. Also heard learned APP for the State.

2) The appeal is already admitted. The applicant is convicted for the offence punishable under section 376 of IPC and sentenced to suffer RI for ten years and to pay a fine of Rs.5000/-. He is also convicted for the offence u/s 4 of the Protection of Children from Sexual Offences Act, 2012 and is sentenced to suffer RI for seven years and fine of Rs.5000/-. He

is also convicted for the offence under sections 363 and 366 of IPC and appropriate punishments were awarded.

3) The case of the prosecution is that the victim girl during the incident which occurred on 20th September, 2013 was around 13 years of age and the present applicant-accused was the neighbour. The parents of the victim girl were having their working hours throughout the day and only the girl after her schooling from 11.00 a.m. to 5.30 p.m. used to remain at home. On 20th September, 2013 when the parents came to home in the evening they found their elder daughter missing. Thereafter, at about 8:30 victim girl made a telephone call to her parents and informed that she was with the applicant. As such the police complaint was lodged regarding missing of their daughter. Thereafter, the victim girl and the present applicant were found out after 17 to 18 hours from a distant place and were brought to the concerned police station. On enquiry the girl narrated the incident of the earlier day and night as to the applicant asking her to accompany him to a temple for performing a sort of Puja. Thereafter, the applicant took her to a room of his friend and

stayed there for entire night and during which there was forcible sexual intercourse on the victim girl.

4) During the arguments, it is submitted that the age of the girl is not proved and that the medical examination report of the victim girl does not clinchingly point out that it was the case of forcible sexual assault, for the reason that there were no injuries on the private parts. By suggesting this, it is argued on behalf of the applicant that this might be a consensual act. This argument on behalf of the applicant cannot be sustained when the age of the girl is considered which is around 13 years and if at all any margin of error is considered in ascertaining the exact age, still, in any event, the age of the prosecutrix was definitely less than 16 years. Considering these circumstances, in the opinion of this Court, it is not a case in which the present applicant can be released on bail during the pendency of the appeal and hence present application is dismissed and disposed of.

(A.R.JOSHI, J.)