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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.244 OF 2016**

Hasan Atisud Shaikh @Mohd Atikur Anisur Rehman ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr.Arun Rajput i/b Ms.Anjali Patil, for the Applicant

Ms.Rutuja Ambekar, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

DATE : 8th JULY, 2016

P.C. :

1. Leave to amend to delete the name of the prosecutrix is granted. Amendment to be carried out forthwith.

2. Heard learned Counsel for the applicant and the learned A.P.P.

3. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 271 of 2015, registered with the Dongri Police Station, for the alleged offences punishable under Sections 376 of the Indian Penal Code and under Section 4 and 8 of Protection of Children from Sexual Offences Act, 2012.

4. The complainant is the mother of the prosecutrix. She has

alleged that her daughter went missing on 5th September, 2015, pursuant to which she lodged a complaint with the Dongri Police Station, which was registered vide C.R.No.271 of 2015, alleging an offence punishable under Section 363 of the Indian Penal Code. It appears that the girl was rescued by a passerby, who brought her to Dongri Police Station, pursuant to which, the girl's statement was recorded. According to the girl, during the said period i.e from 5th September, 2015 to 10th September, 2015, none had misbehaved with her. She has stated that however, prior to that on 3rd August, 2015, the present applicant who is her neighbour, aged 20 years had done 'जबरदस्ती' with her.

5. Learned Counsel for the applicant submits that the prosecutrix in the history given to the Doctor, has specifically stated that the applicant, a shop keeper, knew her for about 1 year and has given history of consensual sex twice i.e. on 3rd and 4th September, 2015 with the applicant, at Hotel Kokan Star. She submits that although consent is immaterial, considering the fact, that the applicant is aged 20 years, he be enlarged on bail.

6. Learned APP submits that although the history given by the prosecutrix is of consensual sex, consent is immaterial.

7. Perused the papers. Investigation is complete and charge-sheet is filed. The history given by the prosecutrix to the Doctor shows consensual sexual intercourse twice with the applicant. Although consent of the prosecutrix is immaterial, since she was a minor, considering the nature of allegations and the peculiar facts of this case, the applicant is enlarged on bail on the following terms and conditions :

ORDER

(i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- with one or two local solvent sureties in the like amount;

(ii) The applicant shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial;

(iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant shall attend the Sessions Court on every date of the hearing and shall cooperate with the conduct of the trial;

(vi) The applicant to cooperate with the conduct of the trial;

(vii) An undertaking to the aforesaid clauses (ii) to (vi), shall be filed by the Applicant, in the Trial Court, within two weeks' of his release.

. The Application is allowed in the aforesaid terms and is accordingly disposed of.

. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.