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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.901 OF 2016

Mohammed Saddam Mushtaq

..Petitioner.

V/s.

The State of Maharashtra and Anr.

..Respondents.

Mr.Mujahid Mulla for the petitioner.

Mr.J.P. Yagnik, APP for respondent-State.

Mr.Kamran Shaikh i/b. Mr.V.M.Siddiqui for respondent No.2.

**CORAM : RANJIT MORE AND
V.L.ACHLIYA, JJ.**

DATED : 3RD MARCH, 2016

P.C. :-

1. Heard learned counsel for petitioner, learned counsel for respondent No.2 and learned APP for the State.

2. The petition is filed for quashing the Special Case - Child Protection No.15/2016 pending before the learned Additional Sessions Judge, Sessions Court at Dindhoshi, Mumbai. Quashing is by consent of respondent No.2, the father of prosecutrix. The said case arises out of F.I.R. bearing C.R. No.335/2015 registered with Kasturba Marg police station, Mumbai. Initially, the offence was registered for offence punishable under section 363 of Indian Penal

Code. After completion of investigation, charge-sheet is filed for offence under section 363 and 376 of Indian Penal Code and section 4 of Protection of Child from Sexual Offences Act, 2012.

3. Respondent No.2 is the father of the victim girl. Learned counsel for the petitioner relied on the statement of the victim girl which is annexed at page 30 of the petition and submits that relations between the petitioner and victim was consensual. He states that petitioner and the victim girl were in love relations and the victim girl of her own accompanied the petitioner.

4. Both counsel submit that the petitioner and the victim girl want to marry and the incident in question occurred on the verge of attaining majority by the victim girl.

5. We however find that as on today, the victim girl has not attained majority. Counsel submit that the petitioner and victim girl are going to marry after the victim girl attains majority.

6. Today, the victim girl as well as her father, the original complainant - respondent No.2 are present. In the above circumstances, they have no objection to quash the criminal proceedings.

7. We are however not inclined to entertain the petition at this stage as the victim girl is still minor as on today and she is going to complete the age of majority in the month of May, 2016.

8. Faced with this difficulty, learned counsel for the petitioner seeks to withdraw the petition with liberty to file a fresh petition. Leave with liberty as prayed is granted. Petition dismissed as withdrawn.

9. Learned counsel for the petitioner submits that the petitioner is in judicial custody. In our view, the petitioner is always at liberty to apply for bail. In the event such bail application is filed, learned Sessions Judge shall consider the same on its own merit in the light of the statement of the victim girl and dispose of the same expeditiously.

(V.L.ACHLIYA, J.)

(RANJIT MORE, J.)