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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1166 OF 2016

Mustaque Mohammed Husain Qureshi ..Applicant.

V/s.

State of Maharashtra ..Respondent.

Mr.Kaynaaf Shaikh i/b. Mr.Vikas B. Shivarkar for the applicant.

Mr.Arfa Sait, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 22ND JULY, 2016

P.C. :-

1. The applicant / accused in Crime No.219/2015 for the offences punishable under sections 376, 313, 506, 201 read with 34 of the Indian Penal Code registered with Faraskhana Police Station, Pune by this application is seeking his release on bail.

2. Heard the learned counsel for the applicant as well as the learned APP. The learned APP submits that in fact the offence is punishable under section 376(2)(n) of the Indian Penal Code as the applicant has repeatedly committed rape

on the prosecutrix. The learned APP further argues that miscarriage with the prosecutrix was done against her will at the instance of the present accused by co-accused.

3. Perused the charge-sheet. The report lodged by the prosecutrix goes to show that she had attained the consenting age, she being 19 years old at the time of the alleged incident. The F.I.R. shows that the prosecutrix was acquainted with Yogita, who is an employee of the present applicant. The applicant is owner of a shop by name 'New Royal' at Ganesh Peth, Pune. It is averred by the prosecutrix in the F.I.R. that due to her acquaintance with the co-accused, she became acquainted with the applicant. On one occasion she had been to the shop of the applicant and at that time, co-accused Yogita left the shop on some pretext and the present applicant committed rape on her. It is further averred that when the incident was immediately disclosed to Yogita, the prosecutrix was informed by Yogita that nothing will happen and she will get money. The prosecutrix further averred that she did not disclose the incident to anybody else. It is further averred that subsequently also, the applicant used to commit rape on the prosecutrix time and again by taking her to the mezzanine

floor of the shop.

4. Perused of the F.I.R. as such prima facie shows that the prosecutrix who had already attained the age of consent was knowing the consequence of the act allegedly committed by the present applicant. Still she continued with the same without disclosing it to anybody else. Ultimately, the prosecutrix became pregnant and was aborted by the co-accused.

5. Prima facie, this appears to be a case of consensual sex. With such evidence, pre-trial detention of the applicant is not warranted and, therefore, the order :-

- (i) The application is allowed;
- (ii) The applicant / accused in Crime No.219/2015 for the offences punishable under sections 376, 313, 506, 201 read with 34 of the Indian Penal Code registered with Faraskhana Police Station, Pune be released on bail on his executing P.R. bond in the sum of Rs.30,000/- with one or more sureties in the like amount;

- (iii) The applicant / accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him / her from disclosing such facts either to the Court or to any police officer and that he shall not tamper with the evidence;
- (iv) The applicant / accused shall co-operate for expeditious disposal of the trial;
- (v) The applicant / accused shall not commit an offence similar to the offence of which he is accused or suspected of commission;
- (vi) The application is disposed of accordingly.

(A.M.BADAR, J.)