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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1376 OF 2016

Mukesh Daya Kharwa ..Applicant.

Vs

The State of Maharashtra ..Respondent.

Mrs Sartaj Shaikh, Advocate for the applicant.

Ms N.S.Jain, APP for the State.

PSI Yashwant Borse, Mumbai Central Jail)

CORAM : A.S.GADKARI, J.

DATE :7th September, 2016.

P.C.

1) This is an application under section 439 of the Code of Criminal Procedure, 1973 for bail in C.R. No. 45/2016 registered with Colaba Police Station, Mumbai under sections 376 (n), 354, 323, 506 (II) of the Indian Penal Code and under section 4 and 8 of the Protection of Children from Sexual Offences Act, 2012.

2) The first information report is lodged by Ms Priyanka Swami on 30/5/2016. The applicant is the husband of the aunt of the victim. On the basis of the said report, the aforestated offence is registered against the applicant. During the course of investigation, the applicant was

arrested on 31.3.2016. After completion of investigation, the police have submitted the charge-sheet in the court of competent jurisdiction.

3) The record reveals that the statement of the victim under section 164 of the Code of Criminal Procedure is recorded before the Metropolitan Magistrate, 18th Court, Girgaon Mumbai, wherein she has stated that she was having affair with a person by name Sanjay. That she had decided to elope with the said Sanjay and for that she tried to commit theft in the house of the applicant. The applicant caught her red-handed and beat the victim. As the victim apprehended that the applicant would disclose the said fact to her mother and other relatives, she rushed to the police station and has lodged the present first information report.

4) The mother of the victim namely Sangita Swami in her statement has stated that her sister-in-law noticed that since December,2015 the money which was kept in the cup-board were being stolen by somebody. It was subsequently revealed that the victim namely Ms Priyanka was committing theft of the said money. That on

29/3/2016 the sister-in-law of Smt.Sangita Swami noticed that Rs.5000 were missing from the cash box. The mother of the victim scolded her and thereafter the present first information report is registered by the victim. The mother of the victim has categorically stated that the victim never informed about any sexual assault committed upon her by the applicant prior to 29/3/2016.

5) In view of the above, the applicant has made out a case for his release on bail.

Hence, the following order :-

- a) The applicant be released on bail in CR No. 45 of 2016 registered with Colaba Police Station, Mumbai on his furnishing a P.R. bond of Rs. 15,000/- with one or more local sureties in the like amount;
- b) The applicant is permitted to furnish cash bail for a period of eight weeks from today and is permitted to comply with the condition of submitting sureties within the said stipulated period;

- c) After his release from jail, the applicant shall attend the Colaba Police Station, Mumbai once in a month i.e. on every first Monday of the said month between 11:00 to 2:00 p.m;
- d) The applicant shall also attend all the dates before the trial Court, without any excuse;
- e) Any two consecutive defaults in complying with the aforesaid conditions will attract the provisions of cancellation of bail;
- f) The applicant shall not tamper with the evidence and/or influence the witnesses;
- g) The application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)