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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1460 OF 2016

Mubarak Mohammadali Sayyed @ Choudhari ..Applicant.

Vs.

The State of Maharashtra ..Respondent

Mr. A.M. Savagave for Applicant.
Ms. Rutuja Ambekar, APP for State.

CORAM: A.S. GADKARI, J.

DATE : 26th September 2016.

P.C.

1 This is an application under Section 439 of Cr. P.C. for bail in CR No.I-47 of 2016 registered with Wagle Estate Police Station, Thane dated 21.2.2016 under Sections 376 of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2 The first information report is lodged by the victim girl who was aged about 17 years at that relevant time. With a view to protect the identity of the victim girl and in consonance with the provisions of Section

228(A) of the Indian Penal Code, the detailed facts mentioned in the present application, the first information report are hereby avoided. Suffice it to say that on the basis of the first information report lodged by the victim girl the present crime for aforesaid offence is registered. In nutshell, it is prosecution case that, by giving promise of marriage, the applicant established physical relationship with the victim girl and subsequently resiled from his promise and in the premise the first information report is lodged.

3 Heard the learned counsel for the applicant, the learned APP and peruse the copy of the chargesheet annexed to the present application.

4 The learned counsel for the applicant submitted that the victim girl had attained the age of understanding and that there was an affair between the applicant and the informant. It is only after the alleged breach of promise of the marriage, the present crime is registered. He further submitted that in view of this, it cannot be said that the applicant has committed any offence punishable under Section 376 of the Indian Penal Code and therefore the applicant may be released on bail. In support of his contention, he relied upon two judgments of this Court namely (1) Satyam Ramchandra Fulore Vs. State of Maharashtra reported in 2015 ALL M.R. (Cri) 2785 and (2) Sunil Mahadev Patil Vs. State of Maharashtra reported

in 2016(3) Bom.CR. (Cri) 435.

5 It is to be noted here that on the date of registration of the present crime, the complainant/informant was of 17 years of age. The witnesses namely Miss. Jyotsna Sitap and Ravi Tiwari in their statements have stated that the informant/prosecutrix was working with them as a co-employee in the Tolia Company at Wagle Estate, Thane and they were aware about the affair between the victim girl and the applicant. The evidence on record reveals that the informant/prosecutrix had attained the age of understanding. In view of the observations made by the Supreme Court in the case of S. Varadrajan Vs. State of Madras reported in AIR 1965 SC 942, the applicant has made out a prima facie case for his release on bail.

6 Hence, the following Order:

(i) The applicant be released on bail CR No.I-47 of 2016 registered with Wagle Estate Police Station, Thane on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.

(ii) After his release from the jail, the applicant shall attend the Wagle Estate Police Station once in month i.e. on every 1st Monday of the said month between 11.00 a.m. to 2.00 p.m.

(v) The applicant shall not tamper with evidence and/or influence the prosecution witnesses.

7 The Application is allowed in the aforesaid terms.

(A.S. GADKARI,J.)