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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1522 OF 2016

Chandan Ashok Dalvi ..Applicant.

Vs

The State of Maharashtra ..Respondent.

Mr Hrishikesh Mundargi i/by J.J. Bardeskar
Advocate for the applicant.
Mr Deepak Thakare, APP for the State.

CORAM : A.S.GADKARI, J.
DATE : 19th 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. I-199/2016 registered with Mumbra Police Station, District Thane under sections 363, 366, 376 (G) 342, 504 of the Indian Penal Code and under sections 3, 4, 5 (i) and 6 of the Protection of Children from Sexual Offences Act, 2012.

2) The first information report is lodged by the mother of the victim girl on 22/4/2016. With a view to protect the identity of the minor victim girl and in consonance with the provisions of Section 228 (A) of the IPC, the name of the victim and the detailed narration of facts mentioned in the first

information report and/or in the statement of the victim girl are hereby avoided. Suffice it to say that on the basis of the report dated 22/4/2016 lodged by the mother of the minor victim girl the present crime is registered. During the course of investigation, the police have recorded the statements of various witnesses including the victim girl. That the police have also conducted the test identification parade as far as the present applicant is concerned. That after receipt of the medical reports and other related documents from the concerned authorities, the police have submitted charge-sheet in the Court of competent jurisdiction.

4) It is the prosecution case that the original accused no.1 Avinash Patil abducted the minor victim girl, took her near Dativali Railway Station and committed the offence as contemplated under section 376 of the IPC. That thereafter the said accused Avinash Patil gave a call to his brother, namely Bhavesh and called him at the scene of offence who also sexually assaulted the victim and committed the said offence. That the victim thereafter came to her house late in the night and she narrated the sexual assault suffered by her to her mother. Thereafter, the present report was lodged.

5) Heard the learned counsel for the applicant, the learned APP and I have also perused the copy of the charge-sheet annexed to the application.

6) The learned counsel for the applicant submitted that in the first information report and in other statements, it is stated that Bhavesh i.e. the brother of accused no.1 Avinash Patil has also committed the offence as contemplated under section 376 of the IPC. He submitted that the present applicant has been arraigned as an accused in the present crime after a local farmer namely Sacharam Jaiswal gave his statement on 23/4/2016, stating that the accused no.1 Avinash Patil has no real brother and the present applicant is the close friend of the said accused Avinash. That on 20/4/2016 he saw the original accused no.1 Avinash Patil along with the victim girl at the scene of offence and he expressed strong suspicion that the present applicant being a very close friend of the said accused no.1 Avinash Patil, must have also committed the said offence. He further submitted that apart from the strong suspicion expressed by the said witness, there is no other evidence on record. He submitted that the victim girl did not identify the present applicant in the test identification parade. He submitted that the applicant is

arrested on 23.4.2016 and since then he is in jail and therefore prayed that the applicant may be released on bail.

7) After perusing the entire charge-sheet prima facie it appears that there is substance in the submissions made by the learned counsel for the applicant. The victim girl has not identified the present applicant in the test identification parade. Apart from the suspicion expressed by the said witness Sacharam Jaiswal, prima facie it appears that there is no other evidence available on record as against the present applicant to connect him with the present crime. In view of the same, the applicant has made out a case for his release on bail. There are serious allegations against the co-accused Avinash Patil and there is substantial corroboration for the same.

8) As stated earlier, the applicant was arrested on 23/4/2016 and since then he is in jail. In view of the peculiar facts of the present case, I am inclined to release the applicant on bail. The learned APP on instructions submitted that if the applicant is released on bail, he may pressurise the prosecutrix and/or her family members and tamper with the evidence. The said apprehension expressed by the learned APP can be taken care of, by imposing stringent conditions upon the applicant.

Hence, the following order :-

- a) The applicant be released on bail in CR No. I-199 of 2016 registered with Mumbra Police Station, Thane on his furnishing a P.R. bond of Rs. 25,000/- with one or two solvent local sureties in the like amount;
- b) After his release from jail, the applicant shall not enter the jurisdiction of Mumbra Police Station, except for marking his presence with the said police station as is directed herein below;
- c) After his release from jail, the applicant shall attend the Mumbra Police Station, on every Monday between 11:00 a.m. to 1:00 p.m. and shall withdraw himself from the jurisdiction of Mumbra Police Station after 2:00 p.m. under any circumstance;
- d) The applicant shall also attend all the dates before the trial Court;
- e) Any two consecutive defaults in complying with the aforesaid conditions will attract the provisions of cancellation of bail;
- f) The applicant shall furnish the documents of his address, where he intends to reside after his release from jail to the Mumbra Police Station;
- g) The applicant shall not tamper with the evidence and/or influence the witnesses;
- h) The application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)