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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1541 OF 2016

Ganapati Nivrutti Morbale ..Applicant.

V/s.

State of Maharashtra ..Respondent.

Mr.Anand S. Patil for the applicant.

Ms.R.M. Gadhvi, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 3RD AUGUST, 2016

P.C. :-

1. The applicant / accused in Crime No.39/2016 for the offences punishable under section 376(1)(2)(L) and 452 of the Indian Penal Code and under sections 4, 5 (k) of the Protection of Children from Sexual Offences Act, 2012 registered with Gokul Shirgaon MIDC Police Station, District Kolhapur by this application is praying for releasing him on bail after the filing of charge-sheet.

2. Heard the learned counsel for the applicant / accused. He argued that except the interested version of the

mother of the victim, there is no evidence against the present applicant. The learned counsel argued that not a single witness has stated that he has seen the applicant in the house of the informant. By drawing my attention to the report of the medical examination of the victim, the learned counsel argued that no evidence of offence punishable under section 376 of the Indian Penal Code is reflected.

3. The learned APP opposed the application. She argued that the statement of the victim goes to show the commission of crime in question. She argued that there is corroborative evidence of seizure of clothes of the victim and her nicker has stains.

4. Perused the charge-sheet. The F.I.R. came to be lodged against the applicant / accused on 18th April, 2016 by the informant, who is mother of the victim child. She averred that on 14th April, 2016 when she returned to her house from her field, she found the present applicant in her house along with her daughter i.e. the victim of the crime in question. According to the informant, upon seeing the informant, the applicant attempted to run away. She caught hold of the

applicant and started giving abuses to him. The informant averred that upon hearing her abuses, neighbours gathered. Upon being questioned, her minor daughter told her that the present applicant had committed rape on her.

5. The F.I.R. of the incident dated 14th April, 2016 is lodged on 18th April, 2016. The F.I.R. itself contains explanation for the delay. The informant - mother had disclosed the incident to her husband and thereafter to her sister-in-law. Subsequently, the family decided to lodge the F.I.R.

6. It is seen that the victim female child is suffering from Spastic Paraplegia. Report of her medical examination goes to show that her hymen was intact and no surface injuries were seen on her body.

7. During investigation, statements of witnesses came to be recorded. Statements of Sou.Chhaya @ Rajendra Chaugule, Sou.Sarita Morbale, Sou.Ambubai Sankpal and Rajendra Chaugule goes to show that they heard the informant giving abuses to the present applicant at about

12.15 p.m. of 14th April, 2016 and upon being asked, the informant disclosed to them that by coming to her house, the present applicant had committed rape on her mentally challenged minor daughter.

8. Statement of the victim is also recorded. She has disclosed in her statement recorded under section 164 of the Criminal Procedure Code to the Magistrate about the commission of rape on her by the applicant. The rupture of hymen is not a requirement for the offence of rape defined by section 375 of the Indian Penal Code.

9. Considering the nature of crime alleged to have been committed by the present applicant, no case for bail is made out. The application is rejected.

(A.M.BADAR, J.)