

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2399 OF 2016

Ismail Abdul Jamadar

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Ganesh Bhujbal Advocate for Applicant.

Mr. R. M. Pethe APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 1st DECEMBER, 2016.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 07/07/2016 in crime no. 479 of 2016 registered at Nigdi Police Station for offence punishable under section 376 of the Indian Penal Code and section 3, 4 & 5 of the Protection of Children from Sexual Offences Act, 2012. Investigation is completed and charge-sheet is filed against the accused on 12/09/2016.

2) It is the case of the prosecution that the victim girl is the friend of the wife of the present applicant. She was working as a sales girl in 'D Mart'. It is the case of the prosecution that one fine day she informed her mother that she

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has abdominal pain. She was taken to Y.C.M. Hospital. The doctor had examined her at Y.C.M. Hospital and then referred the victim to Sasoon Hospital, Pune. The mother of the victim girl had taken her to Sasoon Hospital. Doctor had examined her and informed her mother that the victim girl had conceived pregnancy and that she would have to undergo medical termination of pregnancy due to peculiar health condition. Mother of the victim had informed her father about the same. Doctor had advised them that he would be able to terminate the pregnancy only after police report is filed. Police were called to the Sasoon Hospital. Victim's statement was recorded. Victim disclosed to the police that she was well acquainted with the present applicant. They had become friends. They were in love. That they used to go in rickshaw to a hotel at Dehu Road and had sexual intercourse intermittently. She had accompanied the applicant on various occasions. She has finally stated that she had sexual intercourse against her wish. On the basis of her statement, crime no. 479 of 2016 is registered against the applicant for the alleged offence.

3) Papers of investigation would clearly establish that the victim girl was the friend of the wife of the applicant. That she had accompanied him on

various occasions.

4) The learned counsel for the applicant rightly submits that the papers of investigation would clearly indicate that there was consensual sex. It is true that victim was more than 16 years old at the time of incident, however, she had attained the age of understanding. Investigation is completed and charge-sheet is filed.

5) Taking into consideration the papers of investigation, the facts of the case and the submissions advanced across the bar, this court is of the opinion that applicant deserves to be enlarged on bail. It is made clear that observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 25,000/- with one or more solvent sureties in the like amount.
- (iii) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)