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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 453 OF 2017

Mohammed Shahbaz Irshad Ahmad Siddiqui ..Applicant.

Vs.

The State of Maharashtra ..Respondent

Mr. Manoj R. Gowd for applicant.
Mr. Arfan Sait APP for State.

CORAM: A.S. GADKARI, J.

DATE : 26th April 2017.

P.C.

1] This is an application under Section 439 of Cr. P.C. for bail in CR No.414 of 2016 dated 14.8.2016 registered with Dharavi Police Station, Mumbai under Section 363 of the Indian Penal Code.

2] It is the prosecution case that, the first information report is lodged by the father of the victim girl who was aged about 15 years on the date of registration of offence. With a view to protect the identity of the victim girl and in consonance with the provisions of Section 228A of the Indian Penal Code, the material particulars giving rise to filing of the present crime are not mentioned herein. It is the prosecution case that, the

applicant was having affair with the victim girl and he thereafter committed offence as contemplated under Section 376 of the Indian Penal Code. After lodgment of the first information report, the applicant came to be arrested on 15.8.2016. After completion of investigation, the police have submitted chargesheet on 1.10.2016. Since the victim girl was minor, the provisions of POCSO Act as also applied in the present crime.

3] I have perused the documents annexed to the application and also perused the statement of the victim girl recorded in the question and answer form. After reading the statement of the victim girl, it clearly appears that she had attained the age of understanding when she was entered into relationship with the applicant. The applicant was aged about 19 years on the date of registration of offence. The first informant in her supplementary statement has admitted that the father of the applicant on 14.8.2016 handed over her custody to him. The learned Counsel for the applicant has placed reliance on a decision of this Court in the case of *Sunil Mahadev Patil Vs. State of Maharashtra reported in Bom. C.R. (Cri)* page 435 and in particular on para-9 and 11 which reads as under:

“(9)In view of the increasing offences against the women especially of rape, the legislature and judiciary both found it obligatory to deal these offences with severe punishment and women can be protected if the laws are made rigorous.

Therefore, report of Justice Verma Committee was accepted and necessary and significant amendments were made in these two sections. A wrong doer is to be punished, guilty is to be convicted. However, at the stage of bail, the Court has to consider prima facie under what circumstances the offence is committed by the accused. In the Criminal law, the Court cannot ignore the intention or motive behind the act and that is an important factor in the commission of offence so also to decide the quantum of sentence at the end of trial, so in the case of bail.

(11) Today teenagers are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and a woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship. Sexual urge differs from person to person and there cannot be any mathematical formula in respect of sexual behavioral pattern of teenagers, as biologically whenever the child turns into puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all considered as a sexual maturation. Therefore, some sects with view to regularize sexual behaviour of the community have acknowledged this biological factor and therefore, the early age marriages are performed in some religions or communities. Taking into consideration this social and biological factors the

law makers have considered the age of 15 as a age of consent when the marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such cases.”

4] After taking into consideration the entire material available on record and the statement of the victim girl who had reached the age of understanding and discrimination and in view of peculiar facts of the case, the further incarceration of the applicant is not necessary and the applicant deserves to be released on bail.

Hence, the following Order:

(i) The applicant be released on bail in CR No.414 of 2016 of 2016 registered with Dharavi Police Station, Mumbai, 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 Dharavi Police Station, on every first Monday of the month between 11.00 a.m. to 2.00 p.m.

(iii) The applicant shall attend all the dates before the Trial Court.

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

The Application is allowed in the aforesaid terms.

(A.S. GADKARI,J.)