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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 455 OF 2017

Tukaram Sadanand Palav

..Applicant.

Vs.

The State of Maharashtra

..Respondent

Mr. Purushottam B. Naiknaware for Applicant.

Ms. A.A. Takalkar, APP for State.

CORAM: A.S. GADKARI, J.

DATE: 22 MARCH 2017.

P.C.:

1] This is second application for bail before this Court. The earlier Bail Application No.16 of 2016 preferred by the applicant was dismissed as withdrawn by this Court by an Order dated 10.2.2016.

2] In the earlier Bail Application No.16 of 2016, after hearing the learned counsel for the applicant when this Court was not inclined to grant any reliefs, the learned Counsel on instructions had sought a leave to withdraw the application with liberty to file fresh application for bail before the Trial Court, if the trial pertaining to C.R. No.107 of 2015

registered with Kanjur Marg Police Station does not commence upto 31st December 2016.

3] The record reveals that, the applicant had preferred an application for bail below Exhibit-13 in POSCSO Special Case No.538 of 2015 was rejected by an Order dated 7th February 2017.

The learned counsel for the applicant submitted that the trial pertaining to the CR No.107 of 2015 which has culminated into POSCSO Special Case No.538 of 2015 is not yet commenced. He submitted that the applicant had given promise to the victim girl to marry and the said promise still subsists, however, the mother of the victim girl is not agreeable to said marriage and therefore the applicant was unable to perform marriage with victim. He submitted that the victim girl was aged about 17 years at the time of said incident and was a consenting party to the alleged crime. He submitted that the victim girl had attained the age of understanding. He submitted that after it was revealed that the victim girl got pregnant, it was only because of the medical complications the applicant was constrained to direct the victim girl to undergo the process of abortion. That the applicant is in jail since the date of arrest for more than one and half years. He therefore prayed that the applicant may be released on bail.

3] The applicant is an accused in CR No.107 of 2015 dated 26.8.2015 registered with Kanjur Marg Police Station, Mumbai under Section 376 and 313 of the Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offences (POCSO) Act. The first information report was lodged by the mother of the victim girl. As the victim is a minor girl, the name of the victim and other details revealing her identity, are avoided in pursuance of Section 228-A of the Indian Penal Code.

4] The first information report is lodged by the mother of the victim girl. The applicant was teacher in a coaching class where the victim girl was taking her education for MS-CIT course. That the applicant had developed relationship with the victim girl who was minor at the relevant time. That the victim girl got pregnant due to physical relationship with the applicant. The mother of the victim girl took her to the Doctor who advised her to take care of the victim girl as the fetus was of four and half months old at the relevant time. The first information report further mentions that, the applicant promised the mother of the girl that he will marry with the girl and will take care of the child. However, on 10.7.2015 the applicant took the victim girl to the hospital at Kurla, Mumbai and got the pregnancy of the victim girl aborted. The applicant on 26.8.2015 drove away the

victim girl from his house and told her that he will not perform marriage with her. In the premise the first information report is lodged.

5] The record reveals that the statement of the victim girl is recorded by the police. The evidence available on record duly corroborates the version of the prosecutrix. The applicant was a teacher of the victim girl and it was the fiduciary duty of the applicant to protect the victim girl, however, the applicant though being a teacher took undue advantage of the situation and indulged into such a heinous crime. It is to be noted here that, after noticing that the victim was pregnant, instead of taking her care and performing marriage with her as promised, the applicant deceived the victim girl. Under the pretext of taking the victim girl to the Doctor for medical treatment, the applicant got her aborted in the hospital and subsequently refused to marry with her. The crime committed by the applicant is heinous in nature and therefore disentitles him to be released on bail. The applicant does not deserve to be released on bail.

6] For the forestated reasons, the Bail Application is rejected.

(A.S. GADKARI,J.)