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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.464 OF 2017

Julien Andrew Nicolas @Juli
@Julian Andrew Francis ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr.Adu Fakhruddin Khan i/b Mr.Abdul Wahab Khan, for the Applicant.

Mr.R.M.Pethe, A.P.P for the Respondent-State

PSI – Shinde, Cuffe Parade Police Station, Mumbai.

CORAM : REVATI MOHITE DERE, J.

DATE : 9th AUGUST, 2017

P.C. :

1. Heard learned counsel for the parties.

2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.128 of 2016 registered with the Cuffe Parade Police Station, Mumbai, for the alleged offences punishable under Sections 376 and 506 of the Indian Penal Code r/w under Section 4 of Protection of Children from Sexual Offences Act.

3. Learned Counsel for the applicant relied on the history given by the victim/prosecutrix on 20th August, 2016. He submitted that according to the victim/prosecutrix, aged 16 years, she had physical relations with the applicant without force and with consent on 23rd June, 2016 and 17th July, 2016. The victim/prosecutrix has in the history given to the Doctor, also stated that the applicant had promised her marriage, but was missing since last 10 days. He further submitted that the said history is contrary to the statement of victim/prosecutrix dated 3rd October, 2016, wherein, she has made allegations of sexual assault against her consent by the applicant. He further submitted that the birth certificate of the victim/prosecutrix issued by the Government of Uttar Pradesh, does not mention the victim/prosecutrix's name nor is the full name of the victim/prosecutrix's father, mentioned in the said certificate.

4. Learned APP opposed the application. He submitted that the victim/prosecutrix, was 14 years of age, at the relevant time, as per the birth certificate.

5. Perused the papers. The complainant is the father of the victim/prosecutrix. He has stated that his wife disclosed to him that the applicant had sexually assaulted their daughter, on 17th July, 2016. Pursuant thereto, the complainant lodged the aforesaid complaint on 19th August, 2016, as against the applicant. The victim/prosecutrix was sent for medical examination on 20th August, 2016. The victim/prosecutrix has given History/Details of alleged sexual assault, as under:-

> **"16 years.** (Name of Prosecutrix and Address) brought by WPC R.Y.Tendulkar 081479, for gynac examination under IPC, 376, 506, POCSO, as per letter no.6707/2016 issued by Cuffe Parade Police Station dated 20th August, 2016.
>
> **As per history given by victim and her mother:-**
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> Victim knows alleged person named Jullian (26 years) since 4 months. Victims gives alleged history of sexual intercourse without force with her consent two times on 23/6/16 and 17/7/16. No History physical abuse/assault. Accused (Jullian) promised victim of marriage, but is missing since last 10 days."

6. It appears that thereafter the statement of the victim/prosecutrix was recorded on 3rd October, 2016 wherein she has alleged forcible sexual assault by the applicant. She has alleged that as the

applicant had threatened her not to inform the said incident to her parents, she had not informed them, about the sexual assault earlier. *Prima facie,* there is discrepancy in the history given to the doctor and the statement of the prosecutrix. Apart from the same, there also appears to be some discrepancy with regard to the age of the victim/prosecutrix. In the history given by the victim/prosecutrix, the victim/prosecutrix's age, is stated to be 16 years whereas, according to the birth certificate, it is 14 years. Admittedly, the birth certificate does not mention the name of the victim/prosecutrix.

7. Be that as it may, even if the victim/prosecutrix's age is 16, consent is immaterial. The applicant has been in custody since 19th August, 2016. Investigation is complete and charge-sheet is filed. In the peculiar facts of the case, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.30,000/- with one or two local solvent sureties in the like amount;

ii) The Applicant shall attend the concerned Police Station, on the 1st and 3rd Saturday of every month between 10:00 a.m. to 11:00 a.m., initially for a period of 12 months from his release and thereafter on the 1st Saturday of every month, between 10:00 a.m. to 11:00 a.m, till the conclusion of the trial;

iii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;

iv) The Applicant shall not contact the complainant, witnesses or any person concerned with the case;

v) The Applicant shall not enter the jurisdiction of Cuffe Parade Police Station, till the conclusion of the trial.

vi) The Applicant shall co-operate in the conduct of the trial;

vii) An undertaking to the aforesaid clauses (ii) to (vi), shall be filed by the Applicant, in the Registry of the trial Court, within one week's of his release;

viii) It is made clear, that if there is breach of any of the conditions as stated above, the prosecution shall be at liberty to seek cancellation of Applicant's bail.

8. The Application is allowed and disposed of in above terms.

9. It is made clear, that the observations made herein are *prima facie* and are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

10. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)