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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL BAIL APPLICATION NO.530 OF 2017

Imran Nasir Khan @Titu

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.S.A.Shaikh, i/b Mr.S.J.Singh, for the Applicant.

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

PSI – Kadam, Santacruz Police Station, Mumbai.

CORAM : REVATI MOHITE DERE, J.

DATE : 26th SEPTEMBER, 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.70 of 2015 registered with the Santacruz Police Station, Mumbai, for the alleged offences punishable under Sections 363 and 376 of the Indian Penal Code and under Sections 4, 8 and 12 of of Protection of Children from Sexual Offences Act.

3. Learned Counsel for the applicant submits that the applicant has been falsely implicated in the said case. He submitted that the prosecutrix was a major at the relevant time. He submitted that neither any ossification test has been done in the said case nor was the prosecutrix medically examined. He submitted that the history given to the doctor shows that the prosecutrix had on her own accord, run away with the applicant, as her parents were wanting her to get married to someone else.

4. Learned APP opposed the application. He submitted that the applicant has antecedents, however not a similar offence.

5. Perused the papers. The complainant is the father of the prosecutrix. He has lodged a complaint on 6th February, 2015, as against the applicant alleging an offence punishable under Section 363 of the Indian Penal Code. A perusal of the prosecutrix's statement shows that since January, 2015, she knew the applicant. She has stated that the applicant had disclosed his love for her and was asking her to meet him, failing which he had threatened her to kill her parents and her brother. She has stated that on

6th February, 2015, she left the house with the applicant and they went to Bandra. She has stated that the applicant wanted to get married to her, however, she refused. She has stated that thereafter, the applicant took her to Uttar Pradesh and then to Hyderabad, where she stayed with the applicant for a couple of months. She has stated that the applicant on the pretext of marriage had sexual relations with her. The said statement recorded under Section 161 of Code of Criminal Procedure, is completely contrary to the history given by the prosecutrix to the Doctor. According to the history given by the prosecutrix to the Doctor, she was having an affair with the applicant for one year and as her parents were opposing the relationship and wanted to get her married to someone else, she herself ran away from the house in February, 2015, with the applicant and went with him to Uttar Pradesh and thereafter to Hyderabad and back to Mumbai. She has stated that thereafter, the police apprehended them. She has not given history of any sexual/physical assault by the applicant. It is also mentioned in the said history that no external injuries were found on her body. It is pertinent to note, that the prosecutrix's medical examination was not done. Learned APP also does not dispute the said fact.

6. Considering the material on record, further custody of the applicant is not required. Accordingly, 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.50,000/- with one or two local solvent sureties in the like amount;
- ii) The Applicant shall attend the concerned Police Station, on the first 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, within one week of his release;

- iv) The Applicant shall not enter the jurisdiction of Santacruz Police Station, Mumbai, except for the purpose of attending the police station, as mentioned in clause (ii), till the conclusion of the trial;
- v) The Applicant shall not contact the complainant, witnesses or any person concerned with the case;
- 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 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.

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

8. 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.

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

(REVATI MOHITE DERE, J.)