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

CRIMINAL BAIL APPLICATION NO.603 OF 2017

Akshay Chandrakant Ghamare	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.S.V.Kotwal i/b Mr.Ashish Sawant, for the Applicant.

Mr.S.S.Hulke, A.P.P. for the Respondent-State

PSI - S.A.Dage, Karmala Police Station, Solapur.

CORAM : REVATI MOHITE DERE, J.

DATE : 5th APRIL, 2017

P.C. :

1. Heard learned counsel for the applicant and learned APP for the Respondent – State.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R.No.505 of 2016 registered with the Karmala Police Station, Solapur, for the alleged offences punishable under Sections 363,

366, 376 r/w 34 of the Indian Penal Code and under Sections 4 and 8 of Protection of Children from Sexual Offences Act.

3. Learned Counsel for the applicant submitted that a perusal of the prosecutrix statement recorded under Section 164 of Code of Criminal Procedure shows that the prosecutrix had run away with the applicant on her own accord and that the physical relations between them were by consent.

4. Perused the papers. The prosecutrix at the relevant time was 14 years and the applicant was 21 years of age. The prosecutrix in her 161 statement has stated on 15th October, 2016 when she was going to school the applicant came on a motorcycle and told her that he would drop her home, pursuant to which, she sat on his motorcycle. She has stated that the applicant took her by Temburli road to Daund and thereafter took her by railway to his relatives house at Mumbai. She has stated that she stayed with the applicant in the applicant's relatives house and on 17th October, 2016 the applicant got married to her in a temple. She has further stated that the applicant purchased imitation jewellery and clothes for her. She has

further stated that at the time of the marriage, the applicant's relatives were also present in the temple and that they both stayed at the applicant's relatives house till 20th October, 2016. According to her, when the applicant's relatives were away at work, the applicant committed forcible sexual intercourse with her. She has further stated that thereafter she and the applicant were asked to return back home by the relatives, pursuant to which they were brought to the police station. In the 164 statement the prosecutrix has stated that she had left with the applicant and had stayed at the applicant's grand mother's house for 2 days. She has stated that she got married to the applicant, pursuant to which, the applicant established physical relations with her and thereafter they returned home, pursuant to a complaint lodged by her family.

5. Although in her 164 statement she had not stated that the applicant committed forcible intercourse with her, considering the fact that she was a minor, consent is immaterial. However, keeping in mind the peculiar facts of the case; the fact that the investigation is complete and charge-sheet is filed and that the applicant has been in custody since 21st October, 2016, 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.15,000/- with one or two sureties in the like amount;
- ii) The Applicant shall attend the concerned Police Station on the first Monday of every month between 10.00 a.m. to 11.00 a.m., till the conclusion of the trial;
- iii) The Applicant shall not enter the jurisdiction of Shalegaon Wangi, till the conclusion of the trial, except for the purpose of attending the police station, as mentioned in clause (ii);
- iv) The Applicant shall not tamper with the evidence or attempt to influence the complainant, witnesses or any person concerned with the case;
- (v) The Applicant shall cooperate with the conduct of the trial.

6. The Application is allowed in the aforesaid terms and are accordingly disposed of.

7. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

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

(REVATI MOHITE DERE, J.)