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

CRIMINAL BAIL APPLICATION NO.797 OF 2017

Kaushal Rajesh Gangda

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.A.P.Mundargi, Senior Counsel, i/b Ms.Shradha Sawant, for the Applicant.

Ms.J.S.Lohakare, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.

DATE : 11th 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.I-333 of 2016 registered with the Waliv Police Station, Palghar, for the alleged offences punishable under Sections 376(D), 376(2)(l), 328, 363, 114, 109 of the Indian Penal Code and under

Sections 4, 6, 8, 12, 16 and 21 of Protection of Children from Sexual Offences Act.

3. Learned Senior Counsel for the applicant submitted that the applicant has been falsely implicated in the said case. He submitted that there is discrepancy in the statement of the prosecutrix dated 10th July, 2016 and her supplementary statement dated 13th September, 2016. He submitted that the statement of Priyanka Pandey, who was conducting the dance classes shows that there was no class on 6th July, 2016 and from 7th July to 10th July, 2016. He, therefore, submits that the statement of prosecutrix that the sexual assault took place on 6th July, 2016 and 8th July, 2016, when she was on her way from the dance class is not believable.

4. Learned APP opposed the application.

5. Perused the papers, in particular the statements of the prosecutrix dated 10th July, 2016 and 13th July, 2016. Although, there are minor discrepancies, the material facts which are consistent are, that the applicant had taken the prosecutrix aged 17 years, to Vajreshwari; had hired

a room; and was sexually assaulted by the applicant and others. The history given to the Doctor, by the prosecutrix, when she was medically examined, is also consistent with her statement, that the applicant took her in a Car to Vajreshwari; hired a room and thereafter sexually assaulted her alongwith others. The prosecutrix has also stated, that she was forcibly administered beer, as a result of which she became drowsy. The said fact is also consistent in her statements, as well as in the history given to the doctor. The opinion given by the doctor, after her medical examination, is as under:-

- “1) Evidence of recent forceful penetrative vaginal sexual intercourse.
- 2) Evidence of injuries in the form of two partially healed abrasions on left forearm, abrasion on perineum, hymenal tears;
- 3) Age of victim girl is 17 years 7 months as per mentioned in birth certificate.”

6. Considering the *prima facie* material on record, this is not a fit case to enlarge the applicant on bail.

7. Hence, the Application for bail is rejected and disposed of as such.

8. It is made clear that the observations made herein are *prima facie* for deciding this application, and the learned Judge shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

(REVATI MOHITE DERE, J.)