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

CRIMINAL BAIL APPLICATION NO. 907 OF 2016

Mr Sarvankumar Patiraj Jaiswar	...Applicant
vs	
The State of Maharashtra & Anr.	...Respondents.

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Mr Imran Nasir Shaikh for the Applicant
Ms P.P. Shinde APP for the Respondents
Mr Sunil K. Kadam, PI Wadala TT Police Station.

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CORAM : SMT SADHANA S. JADHAV, J.
17 JANUARY, 2017

P.C. :

Heard. This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 3 September, 2014 in Crime No. 404 of 2014 registered at Wadala T.T. Police Station on 22 June, 2014. The investigation is completed and charge-sheet is filed against the applicant for the offences punishable under Sections 363, 376, 342, 323, 212, 506 r/w 34 of Indian Penal Code.

2 it is the case of the prosecution that on 22 June, 2014 Shankar Jaiswar lodged a report at the police station alleging therein that his brother's daughter Ms "X" had visited him as there were vacations to the school; that the present applicant also is the native of Uttar Pradesh and he was staying in the same locality along with his paternal uncle. The first informant was fully aware that the applicant

is acquainted with Ms “X”. It is alleged that on 17 June, 2014 the victim was not found at home. There was an inquiry with Priti, who happens to be the friend of the victim, who had disclosed to the first informant that she has seen the victim in the company of the present applicant and upon inquiry she had disclosed that he is her brother. Thereafter there was an inquiry with the family members of the applicant. They had disclosed that the applicant had taken money from him and had left the house. The victim and the applicant were not found for quite some time, and therefore, the first informant had arrived at the conclusion that the victim has been abducted by the present applicant.

3 The date of birth of the victim is 11 April, 2003. The statement of the victim was recorded on 22 August, 2014. She has disclosed to the police that on 17 June, 2014 she had been to the common bathroom along with her friend Priti where she saw the present applicant had questioned Priti about his presence on that spot. Priti had informed her that the applicant had called her at that spot. Thereafter, the applicant is alleged to have taken her for ride under threat and coercion. She has disclosed that he had taken her under coercion to the guest house; that he had ravished her for five days. On 24 June, 2014 he had told her that he has rented the premises and both had shifted to the new premises. They had then been to Simla. From there they went to Haryana and stayed with his relative till 12 August, 2014. On 12 August, 2014 he has taken her to Banaras therefrom to Azamgad. According to her, the father of the applicant

had approached both of them and had brought them home and accordingly she had reached her house.

4 Learned counsel for the applicant submits that the victim had voluntarily accompanied applicant and had travelled with him to several places without any grievance; that she had sexual intercourse with the applicant on her own volition, and therefore, it cannot be said that she was abducted and ravished against her wish.

5 The date of birth of the victim shows that she was hardly 11 years 4 months old, and therefore, her consent cannot be taken into consideration.

6 Learned APP, on instructions, submits that the relatives of the present applicant have been assessed as an accused on the ground that they had allowed the applicant and the victim to stay with them while they were on the run.

7 Taking into consideration the age of the victim, the applicant cannot be enlarged on bail. However, the learned Special Court is hereby requested to make an endeavor to conclude recording of evidence as far as possible within a period of four months from the date of framing of charge. The application is rejected and disposed of accordingly.

(SMT SADHANA S. JADHAV, J.)