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

CRIMINAL BAIL APPLICATION NO.1070 OF 2017

Ahmed Nashir Khan @Raju	...Applicant
Versus	
The State of Maharashtra and Anr.	...Respondents

Mr.R.N.Kachave, for the Applicant.

Mr.V.V.Gangurde, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.

DATE : 23rd AUGUST, 2017

P.C. :

1. At the outset, learned counsel for the applicant seeks leave to amend the application. Leave granted. Amendment to be carried out forthwith.
2. Heard learned counsel for the parties.
3. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.I-184 of 2016 registered with the Wagle

Estate Police Station, for the alleged offences punishable under Sections 376(i)(k), 366, 504 of the Indian Penal Code and under Sections 4, 6, 8 and 12 of Protection of Children from Sexual Offences Act.

4. Learned Counsel for the applicant submits that the applicant aged 20 years was in a relationship with the prosecutrix aged 17 years. He submitted that the prosecutrix on her own accord had accompanied the applicant and that they were staying together for about two months as husband and wife. He submitted that as the prosecutrix was pregnant, she went to her parent's house and as the applicant did not contact her thereafter, despite promising marriage, the aforesaid complaint was lodged. Learned Counsel for the applicant has tendered an affidavit of the applicant mentioning therein, his permanent address and the address where he would reside, if he is enlarged on bail. The same is taken on record.

5. Perused the papers, in particular, the statement of the prosecutrix. It appears that the complainant/prosecutrix, was about 17 years of age and the applicant was about 20 years at the time of the incident. A perusal of the statement of the complainant/prosecutrix shows

that both were friends and that their friendship developed into a love affair. It appears that the applicant had proposed marriage to the complainant/prosecutrix, which she accepted. According to the complainant/prosecutrix, when her parents learnt about their affair, they broke the sim card of her mobile, pursuant to which, the applicant gave her a new sim card. She has stated that she was also in touch with the applicant's mother and that from January, 2016, she and the applicant would go out to several places. She has stated that the applicant took her to his cousin's room, where they had physical relations. She has further stated that as her parents had decided to move to Kolkatta, she informed the applicant and accordingly left the house, to go alongwith the applicant. She has stated that thereafter, they started living at one place, called Vangni for about two months as husband and wife. She has further stated that in May, 2016, she called her mother, who informed her, that they had moved to Diva. She has stated that on 13th May, 2016 she and the applicant went to meet her parents and that she was about two months pregnant, at the relevant time. She has further stated that the applicant told her parents that he was going to Pune for a job and would return within a few days and that the complainant/prosecutrix would stay with them. She has alleged that

thereafter the applicant did not return and that her parents also learnt that there was no marriage between her and the applicant. She has alleged that when her father called the applicant, the applicant refused to marry her and instead abused her father, pursuant to which, the aforesaid complaint was lodged.

6. No doubt, consent is immaterial, since the complainant/prosecutrix was aged about 17 years at the relevant time. However, in the peculiar facts of the present case and the fact that investigation is complete and charge- sheet is filed, 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.25,000/- with one or two local 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;
- iv) The Applicant shall not leave the State of Maharashtra, without the permission of the trial Court;
- v) The Applicant shall not contact the complainant/prosecutrix, 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 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.)