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

CRIMINAL BAIL APPLICATION NO.1251 OF 2017

Akshay Haridas Bobade

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.P.G.Sarda, for the Applicant.

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

CORAM : REVATI MOHITE DERE, J.

DATE : 24th JULY, 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.38 of 2017 registered with the Fauzdar Chawadi Police Station, Solapur, for the alleged offences punishable under Sections 305, 376(2)(i) of the Indian Penal Code and under Section 4 of Protection of Children from Sexual Offences Act.

3. Learned Counsel for the applicant submits that it is a case of love affair and that the victim girl had gone with the applicant on her own accord. He relied on the statements of some of the witnesses as well as the letter written by the victim girl expressing her love for the applicant.

4. Learned APP opposed the application. He submitted that admittedly, the victim girl was aged 14 years and therefore, the question of consent does not arise. He submitted that the applicant had taken the victim girl to a lodge on 9th January, 2017, had physical relations with her and thereafter disclosed to her, that he did not want to marry her, as she hailed from a poor family. He submitted that as a result of the aforesaid, the victim girl went into depression, pursuant to which the victim girl disclosed to her mother about the same on 13th January, 2017 and committed suicide on 15th January, 2017. He submitted that the applicant, aged 25 years had taken advantage of the victim girl, aged 14 years, had physical relations with her and thereafter, had refused to marry her saying, that she belonged to a poor family. He submitted that the possibility of the applicant tampering with the witnesses also cannot be ruled out, considering that the victim's family comes from a poor strata.

5. Perused the papers. The complainant is the father of the victim girl. He has stated that the applicant is a resident of village-Rahuti, Solapur and would stalk his daughter. He has stated that he and his wife had approached the applicant and had asked him not to trouble their daughter. He has stated that even his son alongwith his friends had asked the applicant not to meet their daughter. He has stated that on 9th January, 2017, his daughter left home saying, that she was going to School and did not return. He has stated that thereafter, his son met the applicant, who told him that his sister was at Bale Chowk. Thereafter, the victim girl was brought home at about 9.00 p.m. According to the complainant, when they questioned their daughter, she disclosed that the applicant was in love with her and wanted to get married to her and that she too was in love with the applicant and was with him for the whole day. He has stated that his daughter, had disclosed to him, that the applicant had thereafter refused to marry her. He has stated that because of the same, the victim girl went into depression and refused to talk to him. He has stated that on 15th January, 2017, his daughter committed suicide by hanging herself in the house. He has further alleged that initially the applicant had expressed his love for his

daughter and had promised to marry her and thereafter, had refused to marry her and hence, his daughter was under a lot of mental strain. A perusal of the statement of the mother of the victim girl shows, that she was aware of the relationship between the applicant and her daughter. It also appears, that the applicant would come to meet her daughter. She has stated that she did not disclose the said fact, to her husband i.e. the complainant, as he was an alcoholic and would have assaulted their daughter. She has stated that despite asking the applicant not to contact her daughter, as she was only 14 years and as they were poor, the applicant continued to stalk her. She has stated that on 9th January, 2017, the victim girl went with the applicant and returned back late in the evening. She has stated that after that, her daughter's behavior had changed. She has alleged, that her daughter would sit quietly in the house and despite asking, she refused to disclose anything. She has further stated that on 13th January, 2017, when they questioned as to why she was quiet and why she refused to talk and after they gained her confidence, she broke down and disclosed that the applicant had expressed his love for her. She has stated that her daughter disclosed to her, that on 9th January, 2017, she was with the applicant for the whole day and that they had gone to Tuljapur; that after

their return from Tuljapur, the applicant took her to a lodge and had physical relations with her; and thereafter told her, that she belonged to a poor family and his family members would not be ready for their marriage, pursuant to which, there was a quarrel between the two; that because of the argument, she stayed back in the lodge and the applicant went off and thereafter her brother came and took her back. According to the victim girl, the applicant had told her brother, that he was ready to marry her, but, she should not disclose the aforesaid fact to anybody. On 15th January, 2017, the victim girl committed suicide by hanging herself. The fact, that the applicant and the victim girl went to a lodge has also been corroborated by the owner of the lodge – Raghunath Patil, who has stated that the applicant and the victim girl had come to the lodge and that there was a fight between them on 9th January, 2017.

6. Whether or not an offence under Section 305 is disclosed or not, is a matter which will be decided by the trial Court. Admittedly, the question of consent would not arise, considering the fact, that the victim girl was a minor, aged 14 years at the relevant time. The applicant has taken advantage of the vulnerability of the girl, aged only 14 years, sexually

exploited her, by promising marriage and thereafter, refused to marry her, as she came from a poor family. The family of the victim girl, belongs to a poor strata, and therefore, the possibility of tampering with the evidence and influencing the witnesses cannot be ruled out.

7. Considering the material on record, this is not a fit case to enlarge the applicant on bail.

8. Hence, the Application for bail is rejected and disposed of as such. However, the trial of the applicant is expedited. The learned Judge shall make an endeavour to conclude the trial, as expeditiously as possible and preferably within nine months from the date of receipt of this order.

9. It is made clear, that the observations made herein are prima facie for deciding the aforesaid 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.)