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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1928 OF 2017

1. Mahboob Babu Malik Khan
2. Nadeem Mohammed Sarfarad Shaikh ..Applicants.

V/s.

The State of Maharashtra ..Respondent.

Mr.Nizamujddin Khan for the Applicants.

Mr.M.G. Patil, APP for the Respondent-State.

Mr.Nilesh Dhonde, P.S.I. Saki Naka Police Station – present.

CORAM : REVATI MOHITE DERE, J.

DATED : SEPTEMBER 14, 2017

P.C.:-

Heard learned counsel for the parties.

2. By this application, the Applicants seeks their enlargement on bail in connection with C.R. No.124/2016 registered

with the Sakinaka Police Station, Mumbai, for the alleged offences punishable under section 323, 342, 366, 376(d), 377 and 506(II) of the Indian Penal Code.

3. Learned counsel for the Applicants submits that the allegations as against the Applicants are false and baseless. He submits that a perusal of the prosecutrix's / complainant's statement, dated 2 March, 2016 shows, that when the prosecutrix was about to be sexually assaulted by the Applicant No.1, two ladies came near the window and started shouting, as a result of which the act was not completed.

4. Learned APP opposed the application.

5. Perused the papers. The complainant / prosecutrix, aged about 20 years, was working as a maid servant at Malad, Mumbai. She has stated that on 1 March, 2016 she had gone for work at Malad and as it was her employer's daughter's birthday, she left their house at around 3.00 a.m. on 2 March, 2016, to go to her house at Juhu, Mumbai, in an autorickshaw. She has stated that when she

realised that the autorickshaw driver was taking a different and wrong route, she stopped the rickshaw near Zarimari Masjid, Sakinaka, Mumbai. She has stated that she got down from the rickshaw and was looking for another rickshaw, when three unknown persons followed her. She has stated that one person who was being referred to as Salman, came from behind and gagged her and the other two unknown persons held her and took her towards a room in a lane. She has stated there were three more unknown persons who were standing there. According to the prosecution, out of the three persons, two persons assaulted her and the third person threatened to kill her if she shouted. She has further stated that one of the persons (Applicant No.1) pointed a knife and threatened her; and thereafter and all the accused undressed her. She has stated that one by one all the accused were sexually assaulting her and also had oral sex with her. She has stated that when the incident was taking place, two unknown ladies came near the window and started shouting as a result of which, all the accused ran away. Two ladies covered the prosecutrix and informed the police. The Applicants have been identified by the complainant / prosecutrix.

6. Considering the manner in which the prosecutrix was picked up from the road, finding her alone on the streets and thereafter sexually assaulted, this is not a fit case to enlarge the Applicants on bail. The application is rejected. The prayer of the learned counsel for the Applicants for expediting the trial is also rejected.

7. 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.

(REVATI MOHITE DERE, J.)