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

CRIMINAL BAIL APPLICATION NO. 1797 OF 2016

Yashwant Chima Rayat

...Applicant

vs

The State of Maharashtra

...Respondent

.....

Mr Arvind S. Bhandare for the Applicant

Mrs P.P.Shinde APP for the Respondent.

Mr P.J.Choudhari, PSI Shahapur police stn. Present.

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**CORAM : SMT SADHANA S. JADHAV, J.
30 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 11th October 2016 in Crime No.300 of 2015 registered at Shahapur Police Station. The investigation is completed and charge-sheet is filed against the applicant for the offences punishable under Sections 376 of Indian Penal Code and Sections 4 and 6 of POCSO Act.

2 It is the case of the prosecution that on 10th October 2015 Sangita Kamdi lodged a report at the police station alleging therein that the Government of Maharashtra has allotted a piece of land to her family. The present applicant has an agricultural land adjacent to the land allotted to the complainant. The complainant has cattle. According to the complainant on 10th October 2015 at about 8.00 a.m. she had instructed her minor daughter to go to the land for grazing

the cattle. She did not return home by 10 o'clock. Hence, the complainant went to the said plot of land and there she saw the applicant ravishing her minor daughter. The moment he saw the complainant he fled from the spot. According to the complainant, upon inquiry her daughter had informed her that he had committed similar act 3 to 4 months prior to 10th October 2015. On the basis of said report Crime No.300 of 2015 was registered at Shahapur Police Station against the applicant for the offence punishable under Section 376 of Indian Penal Code.

3 Perused the compilation of charge-sheet. It appears from record that on 10th August 2015 the present applicant had given an application to the Police Inspector of Shahapur Police Station alleging therein that the complainant tills a piece of land next to his agricultural land. It was submitted that the complainant is in habit of grazing her cattle in the standing crops of the applicant, that the crops are damaged. He had initially requested them not to graze cattle in his land and damage the crops. The complainant and her husband had threatened him of dire consequences and had claimed rights over his land also. They had abused and also informed him that they would file a criminal case against him and ensure that he would be jailed. The application was received by the Police Inspector of Shahapur Police Station on the same day and there is an endorsement to that effect.

4 The applicant had filed similar application on 2nd October 2015. He has specifically stated that the complainant had abused him

and had also warned him, that in the eventuality he obstructs their cattle from grazing in the said piece of land they would file police case against him and see that he is imprisoned. The said application was also received by the Police Inspector. It appears that there is no inquiry in respect of said applications and they were simply discarded.

5 The statement of the victim was recorded by the lady P.S.I. on 20th November 2015. Perused the questions that were put to the victim. In fact the questions were framed as if they are questions under Section 313 of the Code of Criminal Procedure, 1973 and every allegations by the complainant were put in the question form and the victim was only answering objectively. The act allegedly committed by the applicant was also put to her directly. There is no voluntary answer to any of the questions. It is pertinent to note that there were two witnesses at the time of recording the statement, one was the first informant and second was a social worker.

6 Learned counsel for the applicant rightly submits that it is doubtful as to whether the answers were given by the victim or by the witnesses and the possibility that the said answers are tutored cannot be ruled out.

7 In fact since the applicant had informed the police that the complainant is likely to implicate him in some heinous offence and the only intention was to get him imprisoned, the possibility of false implication cannot be ruled out.

8 Learned APP submits that the victim had a low I.Q. and the applicant had taken advantage of the same. The medical report shows that she was not mentally incapacitated and had low cognition. The report is that she had subnormal intelligence which refers to the I.Q. level. It cannot be said that she had no power of cognition.

9 Be that as it may, the applicant is in custody since 11th October 2015. The applicant is 53 years old.

10 Learned counsel for the applicant submits that the applicant is residing next to the house of the complainant and he would not dare to commit such an act in a broad daylight just next to her house, especially when there are other family members in the house. Learned counsel further submits that in fact the victim having low I.Q. has been exposed to special obloquy by the complainant only to wreck her personal vendetta. It is also submitted that in any case the complainant had threatened the applicant that they would falsely implicate him in some heinous offence.

11 The police had not paid any heed to the applications filed by the applicant. Taking into consideration the papers of investigation, submissions advanced across the bar, this Court is of the opinion that the applicant deserves to be enlarged on bail. The observations made above are restricted to an application under Section 439 of the Code of Criminal Procedure, 1973 and shall not be taken into consideration for the purpose of quashing of FIR, discharge application or at the time of trial. Hence, the order.

ORDER

- (a) The applicant be enlarged on bail on executing his P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (b) The applicant shall not reside at village Shahapur, till conclusion of trial;
- (c) The applicant shall furnish his address to the Investigating Officer and shall report to the concerned Police Station on first Sunday of each month till framing of charge.

The application is disposed of accordingly.

(SMT SADHANA S. JADHAV, J.)