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

CRIMINAL BAIL APPLICATION NO. 2604 OF 2016

Mohammed Swaleh @ Munna	...Applicant
vs	
The State of Maharashtra	...Respondent

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Mrs Saroj N. Pagare for the Applicant
Mr Afran Sait, APP for the Respondent
Ms Poonam D. Jadhav, PSI Central Police Stn. Ulhasnagar, Thane city,
present.

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CORAM : SMT SADHANA S. JADHAV, J.
25 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 24.11.2015 in Crime No.595 of 2015 registered on Ulhasnagar Police Station. The investigation is completed and charge-sheet is filed against the applicant under Section 376(2)(n), 323, 506 of Indian Penal Code and under Section 3 and 4 of the Protection of Children from Sexual Offences Act, 2012.

2 It is the case of the prosecution that on 24.11.2015 the prosecutrix Ms "X" lodged a report at the police station that when she was studying in 9th std. she had received a call on her cellphone by the applicant. He had solicited her friendship. Initially she had refused to oblige. However, they got acquainted with each other. He had insisted upon her to keep physical relations with him and had

threatened her of dire consequences. Thereafter, he had established physical relations with her.

3 In 2014 she had taken admission to Birla College, Kalyan. He used to stalk her. But during the period June 2014 to October 2015, he used to call her to Nitya Lodge and had sexual intercourse with her against her wish.

4 One day she informed her maternal uncle about this and he had given her courage to report the matter to the police station. Accordingly, First Information Report was lodged.

5 Learned counsel for the applicant submits that in fact the applicant and the complainant were in love but only because they belong to different religion, the criminal prosecution has been initiated.

6 In the course of investigation, the Investigating Officer has rightly collected the CDR which would indicate that the complainant and the applicant were in constant touch with each other. The statement of the owner of Lodge Nitya would also indicate that the applicant and the complainant had been to the lodge on 24.9.2015, 6.10.2015 as well as 11th December, 2015 and that he did not suspect that the girl was forcibly brought by the applicant.

7 Learned counsel for the applicant submits that there is

inordinate delay in lodging the FIR and the material on record would indicate that there were intimate relationship between the complainant and the applicant.

8 Learned APP has placed on record the report of the Central Police Station, Ulhasnagar. It appears that the applicant is an accused in Crime No.293 of 2015 and 136 of 2015 and has been charge-sheeted for the offences punishable under Section 379 read with 34 of Indian Penal Code registered with Central Police Station Ulhasnagar. Learned APP fairly submits that it is extremely unfortunate that the victim who was a minor was lured by the applicant and that he had taken undue advantage of her innocence. It appears from the papers of investigation that the family members of the complainant had realized that there were criminal antecedents of the applicant and in order to save future of the complainant had lodged the FIR and not because they belonged to different religion.

9 Taking into consideration the fact that the applicant is in custody for more than 14 months, the charge-sheet is filed and prima-facie appears that the victim had intimate relations with the applicant, the applicant deserves to be enlarged on bail with following conditions. Hence, the order.

ORDER

- (a) The applicant be enlarged on bail on executing P.R.

bond in the sum of Rs.25,000/- with one or more local solvent sureties in the like amount;

- (b) The applicant shall not reside at Kalyan, till conclusion of the trial;
- (c) Before enlarging on bail, the parents of the applicant shall inform the Investigating Agency of Crime No.595 of 2015 about the place where the applicant would reside during pendency of the trial;
- (d) The applicant shall report to the local police station therein on every Saturday in between 10.30 a.m. to 1.00 p.m. during the pendency of trial;
- (e) The applicant shall report to the Court on each and every scheduled date. Upon failure to attend on any two consecutive dates, the prosecution would be at liberty to move an application under Section 439(2) of the Code of Criminal Procedure, 1973 or the learned Sessions Judge shall ensure his presence by issuing Non-bailable warrant;

The application is disposed of accordingly.

(SMT SADHANA S. JADHAV, J.)