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

CRIMINAL BAIL APPLICATION NO.906 OF 2018

Shamsuddin Shahabuddin Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

Ms.R.J.Singh, for the Applicant.

Ms.A.A.Takalkar, A.P.P for the Respondent-State.

PSI – Dhane, Sewree Police Station, Mumbai.

CORAM : REVATI MOHITE DERE, J.

DATE : 27th APRIL, 2018

P.C. :

1. Learned Counsel for the applicant seeks leave to amend to delete the name of the prosecutrix wherever it appears in 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.34 of 2017 registered with the Sewree

Police Station, Mumbai, for the alleged offences punishable under Sections 363 and 376 of the Indian Penal Code and under Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act.

4. Perused the charge-sheet in particular the statement of the prosecutrix, aged 17 years. According to the prosecution, the applicant kidnapped the prosecutrix. Initially a complaint was lodged under Section 363 of the Indian Penal Code and subsequently Section 376 of Indian Penal Code, was added, after the applicant was arrested. A perusal of the 164 statement of the prosecutrix shows that she met the applicant, aged 22 years and thereafter their friendship developed into a love affair. She has stated that they went to several places and that thereafter they started residing together at Virar, as husband and wife. She has stated that physical relations between them were with her consent and that the applicant had not forced her in any physical relationship. Even the prosecutrix in her history given to the doctor has stated that six months back, she had run away with her boy friend (applicant) aged 22 years; that the applicant got married to her in Saibaba Mandir and since then they started residing together in a rented room at Virar; that she gave history of consensual sexual intercourse

multiple times with the applicant. It appears that the prosecutrix was found by the police and put in the Dongri Remand Home and thereafter handed over to her parents. 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; the fact that the applicant is in custody since 6th December, 2017 and 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.15,000/- with one or two sureties in the like amount;
 - ii) The Applicant shall not threaten the complainant, witnesses or any person concerned with the case;
 - iii) The Applicant shall co-operate in the conduct of the trial.
5. The Application is allowed and disposed of in above terms.

6. 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.

7. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)