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

BAIL APPLICATION NO.860 OF 2019

Akshay Bhaskar Pawar

.. Applicant

Versus

State of Maharashtra

.. Respondent

Mr.Piyush Toshnival a/w. Mr.Aniket Nikam, Advocate for the
Applicant.

Mr.Prashant Jadhav, APP for Respondent - State.

Mr.Nimbalkar Anil Balu, Police Naik, Karmala Police Station, Solapur
Gramin, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : NOVEMBER 18, 2019.

P.C. :

Applicant is seeking bail in connection with C.R.No.279 of 2018, registered with Karmala Police Station, Solapur, for the offence punishable under Sections 363, 376 and 506 of Indian Penal Code ("IPC", for short)

2 The prosecution case is that the victim who is a landlady and her husband were working together. The Applicant was also working with them. The Applicant used to make gestures to

Complainant. The victim and her husband then left the job. On 2nd April, 2018, the complainant took her daughter to hospital and then she went to the bus stop. At about 7:00 p.m., the applicant came on motorcycle and took the complainant. He stated that he would drop the complainant to her house. The complainant accompanied him on his motorcycle. The Applicant - accused took her to secluded place and committed rape. He also threatened her of assault. The victim was kept at the said place throughout the night. In the night, the accused had physical relationship twice. In the morning, the victim was dropped by the Applicant at the S.T. Bus stand. The Applicant threatened her. Thereafter, the accused took her in S.T. Bus to the house of her uncle and both of them went to Pune from Karmala, Solapur. The uncle of the accused informed about the identity of the victim. The Applicant told him that both of them had performed marriage. The accused and the victim resided in the house of uncle. Again there was physical relationship between them. Thereafter on 10th April, 2018, the complaint was lodged.

3 During the course of investigation, statements of the witnesses were recorded. The victim was medically examined. Statement of uncle of the accused was also recorded on 12th April, 2018.

4 Learned Advocate for the Applicant submitted that the tenor of the FIR could indicate that the relationship was consensual. The victim had accompanied the Applicant and she had also stayed at the house of the uncle of the Applicant. The allegation of the complainant that she had a minor child with her is false as the other material on record do not fortify the same.

5 Learned APP submitted that there is sufficient evidence against the Applicant. Charge has been framed against the Applicant.

6 On perusal of FIR, it is apparent that the complainant and her husband had noticed that the Applicant was allegedly making gestures to the victim. In spite of that victim accompanied Applicant on his motorcycle on informing that Applicant would drop her at her residence. However, the Applicant has allegedly taken her to the place where there was physical relationship. She stayed with Applicant at that place throughout the night. There was physical relationship. It is also pertinent to note that the statement of Shahaji Pawar who is the uncle of the Applicant mentions that the victim and the Applicant had visited his house and he was informed in the presence of the victim that they are married and they stayed in his house in the night. So considering the factual aspects of the matter, it can be seen that the relationship was consensual. *Prima facie* it is

difficult to accept that the accused had forceful physical relationship with the Complainant. In the circumstances, case for grant of bail is made out.

7 Hence, I pass the following order:

:: O R D E R ::

- (i) Bail Application No.860 of 2019, is allowed;
- (ii) The Applicant is directed to be released on bail in connection with C.R.No.279 of 2018, registered with Karmala Police Station, Solapur, on his executing P.R. Bond in the sum of Rs.25,000/-, with one or two sureties in the like amount;
- (iii) The Applicant shall regularly attend the trial Court on the date of hearing of the case;
- (iv) The Applicant shall not approach the victim or her relatives;
- (v) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)