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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3042 OF 2018

Amin Nabisab Mulla

..Applicant.

V/s.

The State of Maharashtra

..Respondent.

Mr.Sanjiv P. Kadam i/b. Mr.Prashant Raul for the applicant.

Ms.SS.Kaushik, APP for the respondent-State.

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 5, 2019

P.C.:-

Heard learned counsel for the applicant and learned APP for the State.

2. After his arrest on July 6 2018, in crime No.291/2018 for offence punishable under section 376(2) (J) (L) of the Indian Penal Code and sections 3(A) read with 4, 5(K) and 6 of the Protection of Children from Sexual Offences Act, 2012, registered with Karad police station, Pune, the applicant came to be charge-sheeted.

3. The prosecution case is, the victim girl, a minor, is

having moderate intellectual disability. Taking disadvantage of the situation, in absence of her parents and other family members, the applicant who is her relative took her away and committed the offence of rape.

4. Mr.Kadam, learned counsel for the applicant would urge that medical evidence does not speak of the alleged offence and according to him, it is a case of false implication in view of differences between the two families. Apart from the absence of antecedents, he submits that the applicant being a public servant is very much available to face the trial. That being so, only on oral evidence, the applicant cannot be continued to be detained in jail.

5. Learned APP submits that considering mental state of the victim girl, her statement needs to be appreciated. Apart from that, the victim girl stood by what has been stated in the complaint. According to her, the statement of the victim is sufficient to *prima facie* infer the involvement of the applicant in the crime in question.

6. The oral evidence on record speaks of the involvement of the applicant in the crime in question, including that of the statement of the victim girl. So far as the medical evidence is concerned, the same is not supporting the case of prosecution. The fact remains that the applicant a public servant aged about 45 years, having a family,

is claimed to have been involved in the offence of rape.

7. The applicant is behind the bars for last more than six months and merely on the basis of oral statement, it will be difficult to infer involvement of the applicant so as to continue his detention.

- i) The applicant be released on bail in Crime No.291/2018 for offence punishable under section 376(2) (J) (L) of the Indian Penal Code and sections 3(A) read with 4, 5(K) and 6 of the Protection of Children from Sexual Offences Act, 2012, registered with Karad police station, Pune, upon furnishing P.R. bond of Rs.25,000/- with one or more sureties in the like amount;
- ii) The applicant shall not influence the prosecution witnesses or tamper with the evidence;
- iii) The applicant shall keep away from Sangli District till the trial is over;
- iv) The application stands disposed of accordingly.

(NITIN W. SAMBRE, J.)