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

CRIMINAL BAIL APPLICATION NO.554 OF 2019

Dundaji Amruta Mhase	...Applicant
Versus	
State of Maharashtra	...Respondent

Mr.Arun K. Rajput, for the Applicant.

Mr.A.A.Palkar, A.P.P for the Respondent - State.

PSI – Vijay Vagare, Oshiwara Police Station, Mumbai, is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 9th AUGUST, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.195 of 2017, registered with the Oshiwara Police Station, Mumbai, for the alleged offences punishable under Sections 354, 376(2), 323 of the Indian Penal Code and under Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act.

3. Learned Counsel for the applicant submits that the statement of the mother of the victim girl, shows that she was present at the house, on the alleged date of the incident i.e. 7th May, 2017 and had not gone out as alleged by the victim girl i.e. her daughter. Learned Counsel has shown the complaints lodged by the applicant and his wife in the Police Station, whenever their daughter i.e. the victim girl would run away from the house. He states that a similar complaint was made in November, 2015, when the victim girl went missing. Learned Counsel states that when the victim girl was found, she had disclosed to the doctor that she was playing alone on 25th November, 2015 and when she saw an empty tempo, she slept inside the said tempo; that on the next day, she got down from the said tempo, sat in an auto-rickshaw and returned home. Learned Counsel states that when the victim girl was taken for her medical examination, she gave no history of any sexual violence on her. According to the learned counsel, in the present case, in the history given to the doctor, the victim girl has alleged sexual assault by the applicant, since her childhood, whereas, no such complaint was made by her on the earlier occasion, when the doctor had examined her in November, 2015.

4. Learned Counsel for the applicant has tendered an affidavit of the applicant. The same is taken on record. In the said an affidavit, the applicant has undertaken not to contact the victim girl through any sources. He has also undertaken not to pressurize or tamper with any of the witnesses related to the case and has also undertaken not to enter the jurisdiction/area where the victim girl resides. He has also undertaken to attend the trial Court on each and every date. The said undertaking is accepted.

5. Learned APP states that the victim girl is presently kept in the Child Care Centre at Deonar. Learned Counsel for the Applicant on instructions states that neither the applicant nor his family will file an application seeking custody of the victim girl.

6. Perused the papers. According to the prosecution, the victim girl, aged 12 years was found on Juhu Beach, pursuant to which, she was taken to the Police Station. In her statement dated 18th May, 2017, the victim girl has stated that she ran away from the house as her parents would shower more love on her two brothers and would ignore her and that she

could not accept the same. She has further stated that her mother for flimsy reasons would demean her, as a result of which, she would feel bad and would leave the house frequently. She has stated that after her return home, whenever she ran away from home, her parents would suspect that she was with some boy. She has stated that she had earlier left the house on two occasions. When asked, why she has ran away on 7th June, 2017, she has stated that her mother had taken both her brothers with her to a shop and that she was alone at home. She has alleged that the applicant, her father, closed the door and touched her inappropriately. In the said statement dated 18th May, 2017, there are no allegations made by the victim girl of any sexual intercourse by the applicant, whereas in her statement given to the doctor on 8th May, 2017, the victim girl has stated that she ran away from her house and went to Juhu alone, where one boy gave her food and then took her to a room and when the said boy started touching her inappropriately, she ran away from the house and again went with some other boy in an auto-rickshaw to Juhu and started roaming around the beach, where she was found sleeping. In the said history given to the doctor, the girl has made allegations as against the applicant of physical relations. There are several discrepancies in the victim girl's statement. The

applicant is in custody since 2017. Investigation is complete and charge-sheet is filed.

7. Considering the aforesaid and having regard to the applicant's affidavit, 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 attend the concerned Police Station, on the first Saturday of every month, between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial;
- iii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;

- iv) The Applicant shall not to enter the jurisdiction/area where the victim girl resides;
- v) The Applicant shall not tamper with the evidence or attempt to influence/contact the victim girl, witnesses or any person concerned with the case;
- vi) The Applicant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court;
- vii) The Applicant shall abide by the affidavit filed in this Court;
- viii) An undertaking to the aforesaid clauses (ii) to (vii), shall be filed by the Applicant, in the Registry of the trial Court, within two weeks of his release;
- ix) If there are 2 consecutive defaults either in attending the Police Station or in appearing before the trial Court or breach of any of the

conditions as stated above, the prosecution will be at liberty to apply for cancellation of Applicant's bail.

8. The Application is allowed and disposed of in above terms.

9. It is made clear, that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

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

REVATI MOHITE DERE, J.