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

CRIMINAL BAIL APPLICATION NO.231 OF 2019

Rupesh Bandu Mhanera ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr.Santosh Bhamre a/w Mr.Swapnil Patil, for the Applicant.

Mr.V.V.Gangurde, A.P.P for the Respondent - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 14th 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.I-143 of 2018 registered with the Wagle Estate Police Station, Thane, for the alleged offences punishable under Sections 363, 328, 376 and 506 of the Indian Penal Code and under Sections 4, 6, 8 and 12 of Protection of Children from Sexual Offences Act.

3. Learned Counsel for the applicant has tendered an undertaking and affidavit of the applicant. The same is taken on record. In the said undertaking and affidavit the applicant has undertaken that he will not approach or contact the prosecutrix or the complainant and other witnesses in any manner and that he will co-operate in the conduct of the trial and attend the trial Court, on regular basis.

4. Perused the papers. According to the prosecution, the prosecutrix and the applicant knew each other for a year. It is alleged by the prosecutrix in her 161 statement that the applicant took her to his office, gave her alcohol to drink and thereafter committed forcible sexual intercourse with her. The prosecutrix in her 164 statement has not made any allegations of sexual assault by the applicant on her. Thus the 164 statement of the prosecutrix is in variance with her 161 statement. The medical case papers shows that there was no injury found on any body part, however, the hymen was torn and that it was an old tear. It is not in dispute that the incident took place on 1st August, 2018 and the prosecutrix was examined on 4th August, 2018. The applicant is in custody since August, 2018. Investigation is complete and charge-sheet is filed.

5. Considering the discrepancy in the statement of the prosecutrix recorded under Section 161 and 164 of the Code of Criminal Procedure as well as the undertaking- cum- affidavit given by the applicant, 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.10,000/- 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., for a period of 12 months, from the date of his release;
- 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 tamper with the evidence or attempt to influence/contact the prosecutrix/complainant, witnesses or any person concerned with the case;

v) 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;

vi) An undertaking to the aforesaid clauses (ii) to (v), shall be filed by the Applicant in the Registry of the trial Court, within two weeks of his release;

vii) 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.

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

7. 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.

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

REVATI MOHITE DERE, J.