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

CRIMINAL BAIL APPLICATION NO.407 OF 2019

Dilshad Shakur Khan	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.Mohsin Khan Latif Khan Pathan, for the Applicant.

Mr.S.V.Gavand, A.P.P for the Respondent - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 22nd JULY, 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.438 of 2018 registered with the Shivaji Nagar Police Station, Mumbai, for the alleged offences punishable under Sections 363, 376, 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 submits that the relations

between the applicant and the prosecutrix were consensual. Learned Counsel relied on the statement of the waiter of the lodge, where the applicant and the prosecutrix would meet frequently, in support of his submission that the relations between the applicant and the prosecutrix were consensual.

4. Learned APP opposed the application.

5. Perused the papers. The complainant is the brother of the prosecutrix. He has stated that on 9th September, 2018, his sister (prosecutrix, aged 16 years) went to attend the call of nature at 6.30 p.m. He has stated that as his sister did not return home, he and his family started searching for her. He has stated that at about 9.30 p.m., his sister came in an auto-rickshaw along with the applicant. He has stated that when he questioned his sister, where she had gone, she replied that the applicant had taken her to a garden. He has stated that as his sister was frightened and not behaving properly, pursuant to which, he lodged an FIR. The statement of the prosecutrix, aged 16 years shows that the applicant a married man, aged 42 years, with children, and a neighbour, would confess his love for her

and even proposed to her and told her that he would be divorcing his wife. The prosecutrix has alleged that on 9th September, 2018, when she went to answer the nature's call, the applicant told her that they would visit a garden and took her in an auto-rickshaw to a garden and thereafter, to a lodge and had forcible sexual intercourse with her. Her statement recorded under Section 161 of the Code of Criminal Procedure with respect to sexual assault is consistent with her 164 statement. Even in the history narrated to the doctor, she has stated that the applicant had forcible sexual relations with her even earlier. The applicant, aged 42 years, a married man, had taken advantage of a 16 year old girl and had forcible physical relations with her. There is no question of consent, as the prosecutrix was a minor. If the applicant is enlarged on bail, the possibility of the applicant threatening and tampering with the witnesses cannot be ruled out.

6. Considering the material on record, this is not a fit case to enlarge the applicant on bail.

7. Accordingly, the application for bail is rejected and disposed of as such.

8. It is made clear that the observations made herein are prima facie for deciding the aforesaid application, and the learned Judge shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.