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

BAIL APPLICATION NO. 602 OF 2019

Shivam Ravindranath Mishra

..Applicant

Vs

The State of Maharashtra & Anr.

..Respondents

Mr. M.P. Mishra for Applicant.

Mr. S.S. Hulke, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 19th March 2019.

P.C.:

1] This is an application under Section 439 of Cr. P.C. for bail in CR No. 507 of 2018 dated 26.9.2018 registered with Kurar Police Station, Mumbai under sections 354, 363, 376(3), 384 of the Indian Penal Code and under section 4, 8 of the Protection of Children From Sexual Assault Offences Act, 2012 (POCSO Act).

2] Heard the learned counsel for the applicant and the learned APP. Perused the chargesheet.

3] The prosecutrix in the present crime was aged about 15 years at the time of lodgment of crime. With a view to protect the identity of the prosecutrix and in consonance with the provisions of Section 228(A) of the

Indian Penal Code and under Section 33(7) of the Protection of Children From Sexual Offences Act (POCSO Act), the detailed narration of facts mentioned in the first information report and other relevant statements of witnesses disclosing her identity are hereby avoided.

The record indicates that, in the first information report dated 26.9.2018 lodged by the prosecutrix, there is no reference of the applicant. The name of the applicant emerged in the supplementary statement which is recorded on 22.11.2018 i.e. after a gap of about two months from the date of lodgment of the first information report. In her supplementary statement, the prosecutrix has alleged that the applicant has committed sexual assault on her. The record further indicates that, when the police produced the prosecutrix for recording her statement under Section 164 of Cr. P.C, she refused to give her statement and the learned Magistrate has observed that, her presence before it is not voluntary. In pursuance of report submitted by the Chairman, Child Welfare Committee, the Investigating Officer has submitted its report dated 21.11.2018 to the Sessions Court. It is stated therein that, the prosecutrix is changing her stance on every occasions and is not providing reliable information to the police. It is stated that, the prosecutrix mentioned various boys at various

occasions and there is vast variance in her statement. The applicant is aged about 19 years and is pursuing his education. The investigation is already completed.

In view thereof, the applicant can be granted bail.

Hence the following Order:-

- i] Applicant be released on bail in CR No. 507 of 2018 registered with Kurar Police Station, Mumbai on his furnishing PR bond of Rs.15,000/- with one or two local sureties in the like amount;
- ii] The applicant shall also attend all the dates before the Trial Court unless precluded for medical reasons.
- iii] In case of two consecutive defaults, the Investigating Officer is at liberty to file an application for cancellation of bail.
- 4] Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)