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

CRIMINAL BAIL APPLICATION NO.914 OF 2019

Sagar Whavale	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.Arun Rajput, i/b Mr.S.N.Pathak, for the Applicant.

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

CORAM : REVATI MOHITE DERE, J.

DATE : 17th JUNE, 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.58 of 2018 registered with the Dahisar Police Station, Mumbai, for the alleged offences punishable under Sections 376(2)(n), 201, 114, 313 of the Indian Penal Code and under Sections 4, 12 and 21 of the Protection of Children from Sexual Offences Act.

3. Learned Counsel for the applicant submits that the applicant is aged 20 years and is studying in the first year of BBI (Bachelor of Banking and Insurance) from Shailendra Education Society's College at Dahisar, Mumbai. He has tendered an affidavit of the applicant. The same is taken on record and marked 'X' for identification. He submitted that considering the nature of allegations as against the applicant, the applicant be enlarged on bail.

4. Learned APP opposed the application. He submitted that consent is immaterial, considering the fact that the survivor was about 16 years at the relevant time. He, however, does not dispute the fact that the applicant has no antecedents.

5. Perused the papers. According to the complainant, mother of the prosecutrix, her daughter was about 16 years at the relevant time. She has stated that she learnt of the sexual assault by the applicant on her daughter, when she took her daughter to the hospital, as she had pain in the abdomen. She has stated that the doctors diagnosed that her daughter was pregnant, pursuant to which, the aforesaid complaint was lodged. According

to the statement of the survivor, she was studying in 10th Standard when she met the applicant. She has stated that the applicant was about 18 years of age, at the relevant time and that she met him in 2016 and that they became friendly. She has stated that thereafter they exchanged their mobile numbers and started talking to each other on phone. She has stated that the applicant would call her and confess his love for her; that in September/October, 2016, the applicant would drop her to the college; and that on one such occasion, they had physical relations. According to the survivor, later the applicant told her that if she wanted to get married to him, she would have to keep relations with four of his friends. She has stated that when she disclosed the same to the applicant's friends, they stated that the applicant was not loyal to any girl and was having affairs and physical relations with several girls. She has stated that thereafter, as she missed her periods she went to the Doctor, where it was revealed that she was pregnant, pursuant to which, abortion was done in a Private Hospital. According to the survivor, in September/October, 2017, the applicant aged 18 years had came to her house, where she was residing and on the promise of marriage had physical relations with her. She has further alleged that the applicant was responsible for her pregnancy.

6. Learned Counsel for the Applicant has filed an affidavit of the applicant wherein the applicant has given an undertaking that he will not enter the jurisdiction of the Dahisar Police Station, where the survivor/prosecutrix is residing and that he will not pressurize any of the witnesses. The applicant is in custody since January 2019. Investigation is complete and charge-sheet is filed.

7. Considering the peculiar facts of this case and the affidavit filed by the applicant, aged 20 years, 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.20,000/- with one or two sureties in the like amount;
- ii) The Applicant shall attend the concerned Police Station, on the first Monday 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 tamper with the evidence or attempt to influence/contact the complainant, witnesses or any person concerned with the case;

v) The Applicant shall not enter the jurisdiction of Dahisar Police Station, till the conclusion of the trial, except for the purpose of attending the police station, as mentioned in clause (ii);

vi) The Applicant shall co-operate in the conduct of the trial;

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

viii) 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, 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 are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

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

REVATI MOHITE DERE, J.