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

CRIMINAL BAIL APPLICATION NO.1759 OF 2019

Mohd. Tohfik Mohd. Rafik Shaikh ...Applicant

Versus

State of Maharashtra and Anr. ...Respondents

Mr.A.R.Shaikh i/b Mr.Raees Khan, for the Applicant.

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

PSI – Vinay Zinjurke, Malbar Hill Police Station.

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.56 of 2018 registered with the Malbar Hill Police Station, Mumbai, for the alleged offence punishable under Section 376 of the Indian Penal Code and under Section 6 of Protection of Children from Sexual Offences Act.

3. Perused the papers, in particular the statement of the prosecutrix, aged 14 years. According to the prosecutrix, the applicant is her relative i.e. her uncle, aged 22 years and was residing with them at the time of the alleged incident. She has stated that on 11th June, 2018, when they were sleeping, the applicant forced her to come on the first floor and had forcible sexual intercourse with her, without her consent. She has stated that when she was coming down, her relatives i.e. her grandmother and aunty saw her in a bleeding condition, pursuant to which, prosecutrix's father was called and informed about the said incident. Thereafter, the aforesaid complaint was lodged. The statement of the prosecutrix recorded under Section 161 of the Code of Criminal Procedure is consistent with her 164 statement as well as the history given to the doctor. The medical case papers also shows that the hymen was torn. In the history given by the applicant to the doctor, the applicant had stated that the relations between him and the prosecutrix, were consensual, which *prima facie* shows that the applicant had taken advantage of the prosecutrix, aged 14 years (minor). Considering the prosecutrix's age, consent is immaterial. There are other eye-witnesses, who had seen the prosecutrix soon after the incident and as such corroborate the prosecutrix's statement.

4. Considering the aforesaid, this is not a fit case to enlarge the applicant on bail.

5. Accordingly, the application for bail is rejected and disposed of as such. However, having regard to the age of the prosecutrix, the trial of the applicant is expedited.

6. 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.