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

CRIMINAL BAIL APPLICATION NO.1849 OF 2019

Raviprakash Sudama Gaud	...Applicant
Versus	
The State of Maharashtra	...Respondent

Ms.Anjali Patil, for the Applicant.

Mr.P.H.Gaikwad-Patil, A.P.P for the Respondent - State.

PSI – Tausif Mulla and WAPI – Vaishali Gangurde, Cuffe Parade Police Station, Mumbai, are present.

CORAM : REVATI MOHITE DERE, J.

DATE : 20th SEPTEMBER, 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.21 of 2019 registered with the Cuffe Parade Police Station, Mumbai, for the alleged offences punishable under Sections 376(2)(I) (J) 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, aged 18 and the prosecutrix aged 14 ½ years were consensual. She submits that there are photographs and SMS chats to show that the relationship between the two, were by consent. She submits that it is a case of love affair, which was opposed by the prosecutrix's father. Learned Counsel has tendered an affidavit of the applicant. The same is taken on record.

4. Learned APP opposed the application. He submitted that consent is immaterial, considering the fact that the prosecutrix was a minor.

5. Perused the papers. According to the complainant (brother of the prosecutrix), his sister (prosecutrix) was in the 8th Standard at the relevant time. The complainant has stated that 2 months prior, he had seen the prosecutrix talking with the applicant, pursuant to which, he asked his name. The complainant is alleged to have threatened the boy (applicant) not to meet his sister as she was young. The prosecutrix's parents also told their daughter not to meet the applicant. On 5th February, 2019, as the prosecutrix was vomiting and was feeling giddy and weak, she was taken to the G.T. Hospital. On examination, the doctor found that the prosecutrix was pregnant, pursuant to which, she was referred to Cama Hospital for further treatment, where it was disclosed that the prosecutrix was 8 weeks

pregnant. On enquiry the prosecutrix disclosed the name of the applicant and stated that the applicant had forcible sexual relations with her without her consent and that she did not disclose the said incident out of fear. No doubt, there are photographs and SMS/chats to show the nature of relations between the two, as shown by the learned counsel for the applicant, however, the question of consent would not arise, as the prosecutrix was a minor at the time of the alleged incident.

6. Learned APP has tendered the DNA report. According to the DNA Report, the tissue matter stated to be product of conception of the prosecutrix was found to be unsuitable for paternity analysis.

7. The applicant is in custody since February, 2019. The applicant has no antecedents. Investigation is complete and charge-sheet is filed.

8. Considering the peculiar facts of this case, the application is allowed 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 local 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., 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 enter the jurisdiction of Cuffe Parade Police Station, till the conclusion of the trial, except for the purpose of attending the police station, as mentioned in clause (ii) and the trial court proceedings;

v) The Applicant shall not tamper with the evidence or attempt to influence/contact the complainant, witnesses or any person concerned with the case;

vi) 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;

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 as stated above, the prosecution will be at liberty to apply for cancellation of Applicant's bail.

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

10. 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.

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

REVATI MOHITE DERE, J.