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

CRIMINAL BAIL APPLICATION NO.2841 OF 2018

Paresh Ajit Merchant	...Applicant
Versus	
State of Maharashtra	...Respondent

Dr.Nilesh Pawaskar a/w Ms.Y.S.Gokhale for the Applicant.

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

CORAM : REVATI MOHITE DERE, J.

DATE : 25th 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.645 of 2017 registered with the Santacruz Police Station, Mumbai, for the alleged offences punishable under Sections 376(2)(n)(i), 354(A), 509, 323, 504 and 506 of the Indian Penal Code and under Sections 6, 10 and 12 of the Protection of Children from Sexual Offences Act.
3. Learned Counsel for the applicant submits that the applicant

has been falsely implicated in the aforesaid case due to a matrimonial dispute between the applicant and complainant (applicant's wife). He submits that no incident as alleged by the complainant – wife and his daughter had taken place. He submits that the applicant is a qualified Diploma Holder in Electronic Engineering, having worked in various firms like PCL, Jet King, Wipro and after leaving his job was working as a private tutor for children and in English Speaking Institutions. He submits that it was decided by the parties (complainant and the applicant), that the applicant would quit his job, as the complainant had a better job. Learned Counsel further submitted that when the complainant learnt that the applicant would be inheriting ancestral property, she wanted to sell the same and purchase a new flat in her sole name, which was disagreed by the applicant. According to the learned counsel, when the applicant was in the process of filing divorce proceedings, his wife (complainant) lodged the aforesaid FIR alleging that the applicant had sexually assaulted his own daughter. Learned Counsel relied on a letter dated 2nd July, 2018, (not part of the charge-sheet) issued by Dr.Rajesh R. Chokhani, wherein the doctor has stated that when he met the applicant's daughter in connection with another illness, he did not find her mentally disturbed or otherwise, or a

child who has been suggestively molested by anybody. He submitted that the applicant is in custody since November, 2017 and as such be enlarged on bail.

4. Learned APP opposed the application. He submitted that considering the serious allegations, as against the applicant, made by his own daughter and his wife, the application be rejected.

5. Perused the papers. The applicant and the complainant were previously married and were divorced from their respective spouses. After their respective divorces, the applicant and the complainant got married on 10th July, 2000. From the said wedlock, a girl child was born on 9th April, 2006. It appears that there were frequent quarrels between the applicant and the complainant and as the complainant was working with a Multi-National Company and had a better job and a higher salary, it was mutually decided between the applicant and the complainant that the applicant would give up his job and look after the child and the complainant would work. According to the learned counsel, although the applicant had quit his job, he was taking tuitions and was working as a private tutor for school going

children and working in English Speaking Institutions. According to the complainant, the applicant while bathing their daughter would touch her inappropriately on her private part, expose his own private part and would also show her pornographic material on his phone. The daughter, aged 11 years has reiterated what is stated by her mother. The applicant's daughter has given the same history to the Doctor, who examined her. No injuries were found on the person of the minor daughter, probably considering the nature of allegations.

6. Learned Counsel for the applicant has tendered an affidavit of the applicant, stating there in that he will not contact or communicate in any way to his wife, daughter, or any other witness concerned with the said case, if released on bail. He has further undertaken to abide by any conditions, that may be imposed by this Court. The applicant is in custody since November, 2017. Investigation is complete and charge-sheet is filed.

7. Having regard to the peculiar facts and circumstances of this case, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

- i) The Applicant be released on cash bail in the sum of Rs.25,000/-, for a period of eight weeks;
- ii) The Applicant shall within the said period of eight weeks, furnish P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- 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 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;

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

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.