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

CRIMINAL BAIL APPLICATION NO.2905 OF 2018

Balaji Piraji Gavandale	...Applicant/Accused
Versus	
State of Maharashtra	...Respondent

Mr.L.M.Shukla i/b Mr.Shaikh Abdul Kalam, for the Applicant.

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

CORAM : REVATI MOHITE DERE, J.

DATE : 4th 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.146 of 2018 registered with the Goregaon Police Station, Mumbai, for the alleged offences punishable under Section 376 of the Indian Penal Code r/w Section 4 of the Protection of Children from Sexual Offences Act.

3. Perused the papers. According to the prosecutrix, the applicant was in a relationship with her mother and would visit their residence very often. She has stated that the applicant would also reside with them at times. According to the prosecutrix, the incident took place on 10th March, 2018, when she was alone at home. She has stated that her mother had gone for work and her younger brother had gone out to play. She has stated that the applicant finding her alone at home forced her to lay on bed, removed her clothes, asked her not to shout and had forcible intercourse with her. She has stated that although she tried to shout, the applicant prevented her from shouting and had forcible relations with her. Pursuant to the said incident of 10th March, 2018, the prosecutrix lodged an FIR as against the applicant alleging the aforesaid offences.

4. Learned Counsel for the applicant submits that the applicant has been falsely implicated in the said case at the behest of the prosecutrix's mother, as the applicant would refuse to pay for the day to day expenses of the family. He states that the medical evidence does not support the prosecutrix's case of sexual assault. A perusal of the medical case papers of the prosecutrix shows that the doctor has noted that there

was no evidence of any fresh external injury. Infact the observations on page 49, wherein details of sexual violence is stated, in almost all the columns, the answer is 'No'. *Prima facie*, it appears that the medical evidence does not support the prosecutrix case of sexual assault.

5. Learned APP does not dispute the fact that there is no medical evidence which corroborates the prosecutrix case of sexual assault.

6. Considering the aforesaid, 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.15,000/- with one or two local sureties in the like amount;
- ii) The Applicant shall not contact the complainant, witnesses or any person concerned with the case;
- 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 reside or enter in the house where the prosecutrix is residing, till the conclusion of the trial;

v) The Applicant shall co-operate in the conduct of the trial.

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

8. 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.

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

REVATI MOHITE DERE, J.