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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Bail Application No. 645 OF 2020

Anil Sunil Mhatre ... Applicant
Vs.
State of Maharashtra ... Respondent

Mr. Kuldeep U. Nikam, for the Applicant.

Ms. Pallavi Dabholkar, APP for the Respondent - State.

CORAM : C. V. BHADANG, J.

DATE : JULY 27, 2020

PC :

1. This is an application for bail. The applicant is facing prosecution, for the offence punishable under Sections 376, 376 (2) (n) of the Indian Penal Code ("IPC" for short) and Section 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO" for short).

2. According to the prosecution, the prosecutrix who was then aged 16 years was subjected to repeated sexual inter-course by the applicant, who is a distant maternal uncle of the prosecutrix. It is the material prosecution case that such acts of forcible inter-course were committed by the applicant from February, 2019 to September, 2019.

The said fact was revealed, when she was found to be pregnant. Her statement came to be recorded on 19th September, 2019. The allegation is that said acts were committed at the house of the applicant as well as

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at the house of the prosecutrix at Kopri village.

3. I have heard the learned counsel for the Applicant and the learned Additional Public Prosecutor for the respondent-State.

4. The learned counsel for the applicant submitted that the applicant has been falsely implicated and in any event, it is his alternate submission that the prosecutrix has attained the age of consent and even going by the prosecution case, it could, at the highest, be said to be a consensual act. The learned counsel pointed out that the DNA sample of the applicant is obtained for matching with that of the fetus, as admittedly, the pregnancy was terminated. He submits that the report is still awaited.

5. The learned APP has strongly urged that no case for grant of bail is made out. It is pointed out that the prosecutrix was examined, medically much after the period, during which she was subjected to the act of forcible sexual inter-course by the applicant, and therefore, the medical report may not be decisive. The learned APP pointed out that the applicant, taking disadvantage of the close relation between him and the prosecutrix, and further having regard to the fact that the prosecutrix had lost her father and was without any support, had taken undue advantage of the situation.

6. I have carefully considered the circumstances and the

submissions made.

7. *Prima-facie* it appears that the prosecutrix had attained the age of consent. The alleged incident is said to have taken place for a period from February, 2019 to September, 2019, and the said fact was disclosed when the prosecutrix got pregnant. It is neither necessary nor appropriate at this stage to express any final opinion on merits and the evidence, lest it may prejudice either the prosecution or the defence. Suffice it to mention that the investigation is complete and the charge-sheet is filed. The applicant is in custody since 25th September, 2019. In my considered view, having regard to the overall circumstances, discretion can be exercised, subject to conditions.

8. Hence, the following order is passed:

ORDER

- (i) The applicant be released on bail on executing a PR bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.
- (ii) The applicant is permitted to furnish cash surety before the concerned police station in the like amount for a period of eight weeks, after which the applicant shall furnish PB / SB, as above.
- (iii) The applicant shall not try to contact / influence or otherwise tamper with the prosecution evidence / witnesses by any means.

- (iv) The applicant shall undertake to remain present before the learned Sessions Judge during the course of the trial.
- (v) In the event of breach of any of the conditions, the prosecution is at liberty to apply for cancellation of bail.
- (vi) The criminal application is disposed of in the aforesaid terms.

Sd/-

C. V. BHADANG, J.