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

CRIMINAL APPEAL NO.1320 OF 2019

Ankush Subhash @ Nannu Bhisade ...Appellant
Versus
The State of Maharashtra and Anr. ...Respondents

Mr. K. U. Nikam, for the Appellant

Mr. A. R. Patil, A.P.P. for the Respondent No.1 – State.

Mr. Vaibhav Gaikwad, for Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 26th JUNE, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this appeal, the appellant seeks his enlargement on bail in connection with C.R.No.115 of 2019 registered with the Vimantal Police Station, Pune, for the alleged offences punishable under Sections 363, 366, 366(A), 376, 376(2)(N) of the Indian Penal Code; under Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act and under Section 3(i)(w)(i)(ii), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

3. Learned Counsel for the appellant submits that it is a case of love affair and that the victim girl had gone on her own accord with the appellant and thereafter got married in a temple and that both were residing together. He submits that the victim girl and the appellant both went to the Police Station, on learning that an FIR/complaint was filed by the victim girl's mother with the Vimantal Police Station. Learned Counsel for the appellant relied on the medical case papers, in particular the history given by the victim girl in her own words, in support of his submission. He submits that even otherwise investigation is complete and charge-sheet is filed.

4. Learned Counsel for Respondent No.2 opposes the application. He submits that the appellant had induced the victim girl and had lured her. He submits that the victim girl was 16 years and 6 months old at the relevant time and as such the question of consent does not arise. He submits that the victim girl is residing at Latur.

5. Perused the papers, in particular the statement of the victim girl as well as the history given to the Doctor. The complaint was lodged on 9th March, 2019, after the victim girl went missing on 2nd March, 2019, for

the alleged offence punishable under Section 363 of the Indian Penal Code. A perusal of the statement of the victim girl shows that there was some relationship between the appellant and the victim girl, as a result of which the victim girl's parents had moved out of the village and had gone to Pune. It appears from the statement of the victim girl that she had gone to meet the appellant on 2nd March, 2019 as there was a quarrel at home, after which they both went to Alandi and performed marriage and thereafter started residing with each other. The history given by the victim girl to the doctor reads thus:-

“As per History given by the alleged victim in her own language, victim was in love relationship with accused since last one and half year. On 2/3/19 victim ran away with accused and got married at Alandi. On 4/3/19 in Mumbai, they got single room by rent. From 5/3/19 to 19/3/19 there were 4 episodes of penetrative sexual intercourse with ejaculation of semen inside vagina. No H/O use of condom, No unnatural sexual intercourse. No H/O physical assault. Last sexual contact on 18/3/19. No complaints at present. On 20/3/19 accused brother came to Mumbai and brought both accused and victim to Vimantol Police Station. Victim's mother filed a case against accused on 20/3/19”.

6. No doubt, considering the age of the victim girl, consent is immaterial. However, having regard to the peculiar facts and the fact that investigation is complete and charge- sheet is filed, the Appeal is allowed and the appellant is enlarged on bail, in connection with C.R.No.115 of 2019, registered with the Vimantal Police Station, Pune, on the following terms and conditions:-

ORDER

- (i) The Appellant be released on cash bail in the sum of Rs.20,000/-, for a period of eight weeks;
- (ii) The Appellant shall within the said period of eight weeks, furnish P.R. Bond in the sum of Rs.20,000/- with one or more sureties in the like amount;
- (iii) The Appellant 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 Appellant shall in no way contact the victim girl on mobile or telephone or even visit her at Latur or any other place, where the victim girl

is residing;

(v) The Appellant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case and shall not commit similar offence;

(vi) The Appellant 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 Appellant, in the Registry of the trial Court, within one week of his release;

(viii) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

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

8. 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.

9. All concerned to act on the copy of this order, digitally signed by the Private Secretary of this Court.

REVATI MOHITE DERE, J.