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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1798 OF 2021

NADIM JABBAR SHAIKH

....APPLICANT

V/s.

THE STATE OF MAHARASHTRA

.....RESPONDENT

Ms. Misbaah Solkar for the applicant

Mr. M. G. Patil APP for the State

Mr. M. D. Joshi, API, Manpada Police Station, Thane

CORAM : NITIN W. SAMBRE, J.

DATE: NOVEMBER 24, 2021.

P.C.:

1] Applicant is seeking regular bail in C.R. No. 154/2020 registered with Manpada Police Station for Offences punishable under Sections 363, 366, 376(2)(i)(n) of the Indian Penal Code and Section 5 (l) of Protection of Children from Sexual Offences Act, 2012.

2] Victim girl aged about 12 years left her home on 20/5/2020, came in company of the applicant and applicant sexually assaulted

her twice before she returned to her parents. The submissions of learned counsel for the applicant are:

- (a) Even if the victim girl is 12 years of age, she has proper understanding of what she is doing as could be inferred from the investigation carried out;
- (b) The history narrated in the medical does not support the case of forcible sexual intercourse and
- (c) Complainant, mother of victim girl has given an affidavit before the Special Court that she has no grievance against the applicant.

3] Learned APP opposed the prayer.

4] The fact remains that victim girl is below age of 18 years. From the evidence available on record, it can be inferred that she is of 12 years of age and in any case, same cannot be considered to be age of understanding. As such, the consent extended, if any, by the victim girl to the applicant in the matter of sexual offence cannot be termed as legal consent.

5] Apart from above, affidavit given by the complainant in favour of the applicant can be read at this stage as applicant intending to influence the witnesses of the offence in question.

6] There is a strong prima facie case against the applicant of his involvement in a serious sexual offence which is punishable with more than 10 years. That being so, no case for bail is made out. Application stands rejected.

[NITIN W. SAMBRE, J.]