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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1803 OF 2021**

Mr. Samrat Sagar Sarkar

....Applicant.

V/s

The State of Maharashtra

.....Respondent

Mr. Hiten Venegaonkar i/b Mr. Kuldip T. Pawar for the Applicant.

Ms. A.A. Takalkar APP for the Respondent/State.

Mr. Jigar K. Agarwal i/b Mr. Prasad Panchal for the informant.

Mr. Pravin Kuchekar, PI, Kalachowki Police Station, present.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 07, 2021

P.C.:-

1] On January 13, 2021, Applicant came to be arrested in Crime No. 16 of 2021 registered with Kalachowki Police Station for the offence punishable under Sections 376, 107 read with Section 34 of the Indian Penal Code and under Sections 4, 8, 12, 14, 15 and 17 of the POCSO Act and he is already chargesheeted.

2] Prosecution case against the Applicant is, Applicant got befriended to a common acquaintance i.e. Prashant Kadam and committed offence of sexual assault. As a consequence, prosecution

has invoked provisions of Sections 4 and 6 of POCSO Act against the Applicant.

3] Mr. Venegaonkar, learned Counsel for the Applicant would strenuously urge that Applicant is entitled to be released on bail in the aforesaid crime on the following grounds viz (a) there is unexplained delay in lodging the FIR, (b) aim and role of the Applicant is stated for the first time in the supplementary statement but not in FIR, (c) similarly placed accused persons are already granted bail against whom gravity of allegations is serious than the Applicant and (d) there are no criminal antecedents against the Applicant.

4] Learned APP while opposing the aforesaid prayer would urge that Application is liable to be rejected as the offence is serious and conviction in the matter can be achieved on the sole testimony of the victim. She would further claim that, at this stage, Court is not required to appreciate variance in the evidence. As such, rejection is sought.

5] Counsel for complainant assisted learned APP and submitted

that Application is liable to be rejected in view of evidence available on record.

6] The victim who was minor at the relevant time, on 9/1/2021 lodged a complaint alleging penetrative sexual assault from the month of September 2019. In the said FIR, she named about five accused persons.

7] Subsequently, victim was subjected to medical examination where she has named Applicant to be one of the persons who committed penetrative sexual assault. As a sequel, supplementary statement of the victim was recorded on 13/1/2021 wherein she has stated that Applicant was introduced to her by her friend Prashant Kadam. Admittedly, statement of Prashant Kadam is not recorded by the Investigating Officer. Recording of statement of Pravinkumar on 23/1/2021 and that of Mahesh on 24/1/2021 rather casts cloud on the very genuineness of the allegations against the Applicant. It also appears that said statements smack voluntary relationship. Apart from above, there is unexplained delay in lodging the FIR. It is brought to my notice that in a statement recorded under Section 164 of Cr.P.C.,

no role is attributed to the Applicant in the matter of commission of crime.

8] Mr. Venegaonkar, learned Counsel for the Applicant, is very much justified in inviting my attention to the orders releasing the co-accused Amey and Shreelesh on bail against whom allegations appear to be more serious as compared to the Applicant. Co-accused Veda is also ordered to be released on bail by this Court. Applicant therefore deserves to be released on bail.

9] Hence, I pass the following order :-

ORDER

(i) Bail Application no. 1803 of 2021 is allowed.

(ii) Applicant is directed to be released on bail in connection with C.R. No.16 of 2021, registered with Kalachowki Police Station, Mumbai, on executing P.R. Bond in the sum of Rs 25,000/-, with one or more sureties in the like amount.

(iii) Applicant is permitted to furnish provisional

cash bail in the sum of Rs 25,000/- for a period of eight weeks, in lieu of surety.

(iv) Applicant shall attend trial Court on the date of hearing regularly unless exempted by the Court.

(v) Applicant shall not tamper with the prosecution witness.

(vi) Applicant shall not try to contact the complainant or any of her family members till conclusion of the trial.

(vii) Applicant shall report concerned Police Station once in three months on first Saturday of the month between 11.00 A.M. to 01.00 P.M., till further orders.

(viii) Bail Application No.1803 of 2021 stands disposed of accordingly.

(NITIN W. SAMBRE, J.)