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

CRIMINAL APPEAL NO. 1595 OF 2019

Shubam Bansidhar Lone ...Appellant
Versus
The State of Maharashtra and Anr. ...Respondents

Mr. Sandeep D. Shinde i/b Mr. Akshay Purkar, for the Appellant.

Ms. M. H. Mhatre, A.P.P for the Respondent No.1 – State.

Mr. A. M. Savagave, Appointed Advocate for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 4th JANUARY, 2021

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.I-6 of 2019 registered with the Peth Police Station, Nashik, for the alleged offences punishable under Sections 363, 366A, 376, 376(2)(I)(J) of the Indian Penal Code, under Sections 4, 8, 17 of the Protection of Children from Sexual Offences Act and under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

3. Learned Counsel for the appellant submits that a perusal of the statement of the prosecutrix will reveal that the relations, if any, between the prosecutrix and the appellant, a young boy were consensual in nature and that the prosecutrix had left her house on her own accord and had accompanied the appellant on her own volition. He submits that the appellant is a young boy, aged 22 years with no antecedents and that keeping him in further custody would expose him to hardened criminals. He submits that the appellant is ready to abide by any of the conditions that may be imposed by this Court. He further submits that the appellant has filed an affidavit dated 3rd November, 2020 affirmed before the Circle Jailor, Nashik Road Central Prison, wherein the appellant has given an undertaking that he will not contact the victim or the complainant or any of the complainant's family members; that he will not enter the limits of the Peth, District – Nashik and that he will attend the trial Court on every date.

4. Learned APP opposed the appeal. She submits that the consent is immaterial, considering the fact that the prosecutrix was a minor.

5. Learned Counsel for the respondent No.2 also opposed the appeal/grant of bail and submits that considering the age of the prosecutrix, consent was irrelevant. He further submits that the appellant had induced

the prosecutrix to accompany him by promising marriage, pursuant to which she accompanied him.

6. Perused the papers, in particular the statement of the prosecutrix, aged around 15 years. From a perusal of the prosecutrix's statement, it appears that from January 2019, the prosecutrix knew the appellant and that they were in love with each other. It also appears that the appellant had given her a mobile on which she would contact the appellant and vice-versa. She has also stated in her statement that as they were in love with each other, they started meeting each other every day and that they would go out together. She has stated that in February 2019 the appellant proposed marriage and told her that her relatives would not agree to the marriage and hence they should run away and get married. She has further stated that pursuant thereto, she left the house on 14th February, 2019 and accompanied the appellant and that they travelled to Chakan and stayed at the appellant's friend house for 2 days and thereafter went to Karnataka where they again stayed at appellant's friend's house. She has stated that the appellant on the pretext of getting married to her had physical relations with her. She has further stated that on 23rd February, 2019 they met appellant's uncle (paternal), who took them to the appellant's uncle (maternal) house to stay. From the statement of the victim girl it appears

that the appellant and the prosecutrix were in love with each other and that the appellant after promising marriage had physical relations with the prosecutrix. Needless to state that the prosecutrix being a minor, the question of consent would not arise. The appellant is in custody since March 2019 and the possibility of the trial commencing in the immediate near future also appears to be bleak. The appellant has also filed an affidavit stating therein that he will not contact the victim or the complainant or any of the complainant's family members; that he will not enter the limits of the Peth, District – Nashik and that he will attend the trial Court on every date. The appellant has also undertaken to abide by any of the conditions that may be imposed by this Court, in the event, the appellant is granted bail. The appellant has no antecedents. Investigation is complete and charge-sheet is filed.

7. Having regard to the peculiar facts, the Appeal is allowed and the appellant is enlarged on bail, on the following terms and conditions:-

ORDER

i) The Appellant be be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two local sureties in the like amount;

- ii) The Appellant shall attend the Sarkarwada Police Station, Nashik, on every Sunday between 10.00 a.m. to 12.00 noon, till the conclusion of the trial;
- 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 not enter the jurisdiction of village - Peth, during the pendency of the trial;
- v) The Appellant shall not leave the jurisdiction of Nashik District, without the permission of the trial Court;
- vi) The Appellant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing;
- vii) An undertaking to the aforesaid clauses (ii) to (vi), shall be filed by the appellant in the Registry of the trial Court, within two weeks of his release;

viii) If there are 2 consecutive defaults either in attending the Police Station or if the appellant fails to appear before the trial Court or there is breach of any of the conditions as stated above, the prosecution will be at liberty to apply for cancellation of appellant's bail.

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

9. 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.

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

REVATI MOHITE DERE, J.