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

CRIMINAL BAIL APPLICATION NO.3537 OF 2019

Pankaj Maruti Rairikar

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Priyal G. Sarda, for the Applicant.

Mr. S. V. Gavand, A.P.P for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 19th JANUARY, 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 281 of 2019 registered with the Sinhagad Road Police Station, Pune, for the alleged offences punishable under Sections 363, 376(3)(i)(n)(j) of the Indian Penal Code and under Sections 4, 6, 8 and 12 of Protection of Children from Sexual Offences Act.

3. Learned Counsel for the applicant submits that a perusal of the prosecution case will reveal that it was a case of love affair between the

applicant and the prosecutrix, aged about 13 ½ years. He submits that a perusal of the police report dated 6th April 2019, which is on page 50 of this application, will reveal that the applicant and the prosecutrix were in a relationship for about 3 years, prior to the incident; that her parents were against the said relationship; that as her parents were telling her they would take her to village and get her married, she sent a letter to the applicant on 28th March, 2019, that they should run away from the house on 29th March, 2019; that pursuant thereto, she ran away from the school with the applicant; that they lived in a village as husband and wife and that the applicant had physical relations with her with her consent and thereafter, they were apprehended by the police.

4. Learned APP opposed the application.

5. Perused the papers. On 29th March 2019, the prosecutrix father lodged an FIR stating therein that his daughter had gone to school on 29th March 2019, in the morning, however, had not returned home. The said FIR was lodged against unknown persons. On 5th April 2019, the applicant was arrested, for the aforesaid offences. The prosecutrix in her 161 statement has alleged that the applicant had taken her against her wishes and that the applicant had physical relations with her against her wish. The

said statement recorded under Section 161 Cr. PC is signed by the prosecutrix's mother. The said statement allegedly given by the prosecutrix is contrary to what is stated by her to the doctor. A perusal of the history given by the prosecutrix to the doctor reveals that the prosecutrix knew the applicant for about 3 years prior to the incident; that they were in a love relationship for about 3 years; that on 29th March, 2019, she eloped with the applicant and went to Khedegaon, where they lived in a rented premises and that on 29th March 2019, they had a consensual physical relationship. The history given by the prosecutrix shows that there was no history of physical assault and that the prosecutrix and the accused were apprehended by the police, as the victim's parents had filed a complaint against the applicant. The question of consent would not arise, as the prosecutrix was a minor. However, be that as it may, the applicant is in custody since 6th April, 2019. The applicant was about 19 years at the time of the incident. Investigation is complete and charge sheet is filed and as such in the peculiar facts of this case, further detention of the applicant is not warranted.

6. Accordingly, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Sunday of every month between 10:00 a.m. to 12:00 noon, till the conclusion of the trial;
- (iii) The applicant 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 Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (iv) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;
- (v) The applicant shall not tamper with the evidence or attempt to influence or contact the prosecutrix, complainant, witnesses or any person concerned with the case;
- (vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

7. The application is allowed in the aforesaid terms and is accordingly disposed of.

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.