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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 592 OF 2016

Prakash s/o Dadarao Suryawanshi ..APPLICANT

VERSUS

The State of Maharashtra ..RESPONDENT

Mr Mohsin Khan, Advocate for applicant;
Mr K. D. Munde, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 23rd February, 2016

ORDER :

By the present application under section 438 of the Code of Criminal Procedure, the applicant is seeking pre-arrest bail, in connection with C.R. No.1021 of 2015, registered with Kranti Chowk Police Station, Aurangabad, for offences punishable under sections 354 (d), 354 (a) (2), 506 of the Indian Penal Code and under section 66 (I) (a) (b) (3) of the Information Technology Act, 2000.

2. The case of the prosecution is that complainant Yojana Ramdas Mukhedkar got engaged with the applicant with an object of marriage, however, it appears that for the reasons best known, the same could not be materialized. It is alleged in the first information report that the applicant has committed an offence under the above referred sections by taking recourse to certain actions, viz. circulation of photograph of the

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complainant with the applicant after their engagement when they visited Ellora and such other information about their relations on various electronic forms of communication like face book, whatsapp, etc. It is the case of the prosecution that the intention of applicant was to disrepute and defame the complainant.

4. While trying to make out a case for grant of pre-arrest bail, learned Counsel appearing on behalf of the applicant would urge that the applicant was already booked and released on bail, in C.R. No.I-557 of 2014, registered with Kranti Chowk police station, Aurangabad on 24th November, 2014, for offences punishable under sections 354-D (i), (ii), 294, 504, 506 of the Indian Penal Code and under section 66 (E) (a), (b) (d) of the Information Technology Act, 2000. According to him, the applicant is again sought to be falsely implicated in the present crime. He would then urge that earlier relationship between the applicant and complainant, after the engagement, is admitted position on record.

5. Apart from above, learned Counsel would urge that, having regard to the nature of allegations in the first information report, since nothing is to be recovered from the applicant, his custodial interrogation is not necessary. He would then urge that in earlier C.R. No.I-557 of 2014 also nothing was recovered from the applicant.

6. Learned Addl. Public Prosecutor opposed the application on the ground that though C.R. No.I-557 of 2014 (referred supra) was earlier

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registered against the applicant, he continued with his activities of disreputing and defaming the complainant, who is an unmarried girl. He would then rely upon the investigation carried out till date without custodial interrogation of the applicant. According to him, for the purpose of further investigation, custodial interrogation of the applicant is necessary.

7. As during the course of hearing of the present application, the allegation of biased investigation was made on behalf of the applicant, this Court had called report from the Deputy Commissioner of Police (Headquarters), Aurangabad on the said issue and it is brought to the notice of this Court through a report that the investigation into the present crime is proper and there is no nepotism or biased approach on the part of the Investigating Officer, who is not related to the complainant.

8. In the above background, it is required to be evaluated as to whether custodial interrogation of the applicant is necessary.

9. If the first information report in an earlier offence, i.e. C.R. No.I-557 of 2014, registered on 24th November, 2014 and the first information report in the present crime, i.e. C.R. No.1021 of 2015 in which the applicant is seeking pre-arrest bail are perused, it is reflected that the applicant is taking recourse to circulating certain messages along with photographs of the complainant on certain electronic forms of communication, such as face book, whatsapp, etc. Although it is an admitted position on record that the applicant was earlier engaged with the complainant, yet in view of

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break in their relationship, in my opinion, the applicant ought to have discontinued the activity of circulating messages, much less photographs on such forms of electronic communication and then issuing certain letters/pamphlets to the authorities, such as Hostel Warden, college, institutions, etc.

10. Having regard to the nature of approach of the applicant with the issue narrated in the first information report and the investigation carried out till date depicts that he is *prima facie* involved in the issue of circulation of messages through certain electronic forms of communication, in my opinion, for the purpose of assisting further investigation custodial interrogation of the applicant is necessary. Further, the offences alleged against the applicant are of serious nature.

11. In that view of the matter, no case for grant of pre-arrest bail is made out. Thus, Criminal Application fails and stands rejected.

(N.W. SAMBRE, J.)

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