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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.209 OF 2016
WITH
CRIMINAL APPLICATION NO.119 OF 2016
IN
ANTICIPATORY BAIL APPLICATION NO.209 OF 2016**

Amogsiddha Mallappa Nyamgonde	...Applicant
Versus	
The State of Maharashtra and Anr.	...Respondents

Mr.P.G.Sarda for the Applicant

Ms. Veera Shinde, A.P.P for the Respondent-State

Mr.Amit Karande, for the Respondent No.2.

***CORAM : REVATI MOHITE DERE, J.
DATE : 16th APRIL, 2016***

P.C. :

1. Heard learned Counsel for the applicant, learned A.P.P and learned counsel for the intervener.

2. By this application, the applicant seeks pre-arrest bail in connection with C.R. No. 22 of 2016 registered with the Mangalwedha Police Station, Solapur, for the alleged offences punishable under Sections 376, 506(2), r/w 34 of the Indian Penal Code.

3. A private complaint was filed by the prosecutrix in the Court of learned JMFC, Mangalwedha on 11th December, 2015, pursuant to which the learned Magistrate was pleased to pass an order under Section 156(3) of the Code of Criminal Procedure and the aforesaid FIR came to be registered as against the applicant, alleging the aforesaid offences.

4. According to the prosecutrix, the applicant was known to her as they were studying in the same College i.e. Sant Damaji College. She has alleged that the applicant by assuring her marriage had physical relations with her, from 2006 onwards. She has alleged that the applicant had even called her to Mumbai and had physical relations with her on the assurance that he would marry her. She has alleged that she had to undergo an abortion on 3 occasions. She has stated that when she asked the applicant to marry her, he allegedly threatened her with dire consequences.

5. Learned Counsel for the Applicant submitted that the allegations as against the applicant are false. He submitted that if the prosecutrix had physical relations from 2006 onwards, as disclosed by her, then the applicant at the relevant time was 16 years of age and the

prosecutrix was only 13 years and that it was highly improbable that the said incident of rape on pretext of marriage had occurred. He submitted that no specific dates were set out. According to the learned counsel, if at all the alleged incident had taken place, it was by consent. He submitted that there is no evidence that the prosecutrix was pregnant and that she had to undergo abortions, as alleged.

6. Learned APP has produced a certificate from the Medical Officer, Rural Hospital, Mangalwedha, Solapur. From the endorsement on the certificate, it appears that Tablet Primont-N is used for prolonging menstrual bleeding and that this tablet is not used for abortion.

7. Learned Counsel for the intervener opposed the bail application. He relied on the order passed by the learned Single Judge in Criminal Anticipatory Bail Application No.218 of 2015.

8. Perused the papers. It appears that the applicant and the prosecutrix were known to each other for several years. Whether or not the consent was voluntary or not, is a matter which will be decided by the trial

Court. There are no documents brought on record, to show that the prosecutrix had undergone abortions.

9. Considering the peculiar facts and circumstances of the case, the application is allowed and the applicant is granted pre-arrest bail on the following terms and conditions :

ORDER

(i) In the event of the arrest, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.10,000/- with one or two sureties in the like amount ;

(ii) The applicant shall attend the concerned Police Station as and when called for, till the filing of the charge-sheet;

(iii) The applicant shall not tamper or attempt to influence the complainant, witnesses or any person concerned with the case.

10. The Application is allowed in the aforesaid terms and is accordingly disposed of.

11. It is made clear that the observations made herein are *prima facie* and are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

12. In view of the disposal of the Anticipatory Bail Application No.209 of 2016, the Intervention Application being Criminal Application No.119 of 2016 does not survive and the same is also disposed of.

13. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.