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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.947 OF 2016.

Mayank Ashok Malu	 Applicant
V/s.	
The State of Maharashtra	 Respondent

Mr. Aniket U. Nikam, for the Applicant.
Mr. Y. M. Nakhwa, APP for the Respondent State.

CORAM : A. M. BADAR, J.

DATE : 17th JUNE, 2016.

P.C. :

1. The applicant/accused in Crime No.I-69/2016, for the offence punishable under Section 376 (1) and (2) and 328 of the Indian Penal Code and Section 3(1) (xii) of the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989, registered with Mumbai Naka Police Station, Nashik City, by this application is praying for pre-arrest bail.
2. Heard the learned counsel for the applicant. He argued that the F.I.R. itself reveals that the informant was acquainted with the applicant since May, 2015. They were having friendly relations and on 14.2.2016, they spent the entire day together. The learned counsel for the applicant submits that the averments in the F.I.R itself reflect that it is the

applicant who himself has disclosed the informant that he had drugged her and thereafter committed sexual intercourse with her after she pass off. According to learned counsel for the applicant no offence under Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is prima facie made out in the F.I.R. in question and therefore, bar of section 18 of the said Act is not attracted.

3 As against this the learned APP argued that now the offence punishable under Section 3 (2) (v) of the Scheduled Caste and Schedule Tribes (Atrocities) Act, 1989 is being added to the case diary of the crime . He further argued that the offence alleged is serious and therefore, the applicant is not entitled to bail.

4. Perusal of the F.I.R. lodged by the informant does not show that the applicant was having love relations with the informant. It only shows that they were having friendly relations. The avernments in the F.I.R. shows that on 14.2.2016, the applicant proposed the informant, but she refused. The informant reported that when she was at the house of the applicant, the applicant offered cold drink to her and she felt giddiness by drinking cold-drink and on that night she slept at the house of applicant. The informant then suffered pain at her private part & stomach; and ultimately she went to Six Sigma Hospital for medical check up on 4.3.2016 accompanied by applicant. According to informant, on that day

he disclosed that he had sexual intercourse with her. When she became unconscious after drinking cold drink on 14.2.2016.

5. The papers of investigation reveals that similar history was disclosed by the informant to the Medical Officer and she subjected herself to medical examination during the course of investigation. True it is that the F.I.R. is filed on 2.5.2016, but in traditional set up, the delay in lodging F.I.R. in sexual offences cannot be said to be fatal and that too at the initial stage. Broader probabilities of the case of prosecution are required to be kept in mind while dealing with sexual offences. In the case in hand, the avernments are to the effect that by spiking cold drink, the applicant had committed rape on the informant. These allegations does not warrant pre-arrest arrest bail, leave apart the offence under Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989. The application is rejected.

[A. M. BADAR, J.]