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

CRIMINAL APPEAL NO. 175 OF 2017

Abhas Sandesh Patil,
Age : 53 years, Occ:Business,
Residing at 16/B/6, Plot No.6,
Sheetal Society, NNP,
Gen.A.K.Vaidya Marg,
Goregaon (E),
Mumbai - 400 065.

...Appellant

Versus

The State of Maharashtra
(At the instance of Sr. Inspector of
Police, Goregaon Police Station,
Goregaon (West), Mumbai.
Through the Public Prosecutor,
High Court, Mumbai.

...Respondent

Mr.S.P.Kadam i/b Mr.B.L.Jagtap, for the Appellant.

Mr. H. J. Dedia, A.P.P for the Respondent-State

**CORAM : SMT.V.K.TAHILRAMANI &
REVATI MOHITE DERE, JJ.**

DATE : 24th MARCH, 2017

ORDER (Per Revati Mohite Dere, J.) :

1. Heard learned counsel for the parties.

2. By this appeal, the appellant seeks pre-arrest bail in connection with C.R. No. 425 of 2016, registered with the Goregaon Police Station, Mumbai, for the alleged offences punishable under Sections 376, 506(ii) of the Indian Penal Code and under Sections 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SCST Act').

3. Mr.Kadam, learned counsel for the appellant submitted that the allegations made by the complainant are false. He submitted that the appellant and the complainant were good friends and that their friendship resulted in a love affair between the two. He submitted that the complainant had voluntarily accompanied the appellant to several places and that they had stayed together at guest houses and hotels and that the physical relations between them were by consent. He submitted that the complainant was a major aged about 21 years at the relevant time. According to Mr.Kadam, a false complaint has been lodged by the victim girl, at the instance of the appellant's competitor. He further submitted that a perusal

of complainant's statement dated 8th October, 2016 shows that no offence under the provisions of the SCST Act is disclosed, inasmuch as, there is no mention to the complainant's and appellant's caste. He relied on several photographs and WhatsApp messages sent by the victim girl to the appellant, expressing her feelings for him. The same are annexed to the appeal.

4. Learned APP does not dispute the fact that the appellant has surrendered his mobile phone and has subjected himself to medical tests and has also attended the police station.

5. Perused the papers. It appears that initially a complaint was lodged by the complainant as against the appellant which was registered under Sections 376, 506(ii) of the Indian Penal Code. It appears that subsequently the provisions of the SCST Act were invoked. According to the complainant, the appellant had sexual intercourse with her, without her consent. The complainant is a major. It appears that the appellant and the complainant were acquainted with each

other and that their acquaintance developed into a love affair. Pursuant to the interim protection granted to the appellant, the appellant attended the concerned police station and has surrendered his mobile, in which he is alleged to have taken the complainant's photograph. It also appears that the appellant has subjected himself to medical tests, as required by the Investigating Officer and has also attended the police station. We may also note, that in the statement dated 8th October, 2016, there is no reference to the caste of the complainant or the appellant and therefore, prima-facie the provisions of the SCST Act will not apply. In the facts, custodial interrogation of the appellant is not necessary.

6. Considering the peculiar facts of this case and the fact that the appellant has co-operated with the investigation, the appeal is allowed and the appellant is granted pre-arrest bail on the following terms and conditions :

ORDER

- (i) In the event of the arrest, the appellant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount ;

(ii) The appellant shall attend the concerned Police Station once a fortnight i.e on 1st and 3rd Saturday of every month between 10.00 a.m. to 12.00 noon, till the filing of the charge-sheet and thereafter as and when called for by the Investigating Officer ;

(iii) The appellant shall not contact the complainant, witnesses or any person concerned with the case.

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

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

(REVATI MOHITE DERE, J.)

(V. K. TAHILRAMANI, J.)