

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1159 OF 2017

Devidas Babruwan Chavan ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Murtuja Nazmi i/b. Mr. A. S. Ovhal for the applicant.
Mr. Arfan Sait, APP for the respondent - State.

**CORAM : PRAKASH D. NAIK, J.
DATE : 6 JULY, 2017**

P.C. :

1. This is an application for anticipatory bail. The applicant is apprehending arrest in connection with C. R. No.175 of 2016 registered with Govandi Police Station, Mumbai. The offence is registered under sections 376(d), 506(2) & 328 of IPC. The FIR was registered on 19th September, 2016 by the victim who is aged about 19 years.

2. The prosecution case is that the victim girl used to stay at Mumbai with her maternal uncle and grand parents. Her native place is at Usmanabad. The accused are the resident of her native place and she was acquainted with them. It is alleged that on 2nd

February, 2016, both accused met her at Mankhurd Station and asked her to accompany them at the house of the relative of co-accused. On reaching the spot, co-accused Rahul gave her some water to drink. After drinking water, she felt giddiness. Both accused thereafter, committed sexual intercourse with her. They also recorded video shooting by mobile phone. Since the victim was allegedly threatened, she did not disclose the incident to her parents. At the instance of the accused, the victim also went to police station to lodge complaint against her parents. The police called her parents and thereafter she did not lodge any complaint with the police. The FIR was lodged on 19th September, 2016, after a period of seven months from the date of alleged incident.

3. Learned advocate for the applicant submitted that he has been falsely implicated in this case. There was a love affair between victim and the co-accused Rahul Rathod. He relied upon the letters written by victim to Rahul. He further submitted that on 17th September, 2016, the parties had approached Mahatma Gandhi Tanta Mukti Samiti at Usmanabad to resolve the dispute. It is submitted that in the said meeting, the victim and the accused were present and there was enquiry with both of them. They stated that they both wanted to

marry. However, the father of the victim was not agreeable for the same. The said committee has issued certificate dated 18th September, 2016 which has been annexed to the application. It is submitted that thereafter on 19th September, 2016, the FIR was lodged. It is further submitted that the victim refused to undergo medical examination of her genital which fact was recorded in the said papers which are annexed to the application. It is submitted that the FIR was lodged belatedly after a period of seven months at instance of the parents of the victim. He submitted that the allegations made by the complainant, that the water which was given to her was spiked, appears to be afterthought and concocted, as according to the victim the accused had met her coincidentally and it was not preplanned meeting. The question of carrying intoxicant substance did not arise. It is further submitted that if the complainant victim could go to police station to lodge the complaint against parents nothing had prevented her to lodge complaint against the accused. The co-accused Rahul Rathod has been arrested and he has been granted bail.

4. Learned APP vehemently opposed the application for anticipatory bail. He submitted that the FIR clearly attributes serious

role to the applicant in the said crime. The applicant has indulged into an act amounting to offence under section 376 and also a person who shot the incident on his mobile phone. It is submitted that custodial interrogation of the applicant is necessary. The mobile has to be recovered. He submitted that the medical case papers reflects the sexual assault which was committed by using force, although the victim did not agree for medical examination of genital. He submitted that the documents relied upon by the applicant cannot be considered at this stage. The statement of the victim was recorded under section 164 of Cr.P.C. which supports the prosecution case. She had no reasons to falsely implicate the applicant. Learned APP also submitted that the applicant was absconding, hence application may be rejected.

5. Perused the documents on record. On perusal of the FIR, it is apparent that alleged incident had occurred seven months prior to registration of FIR. It is also apparent that victim had gone to police station to lodge complaint against her parents. The certificate issued by the Samiti referred hereinabove, refers to affair between co-accused and the victim that they were willing to marry but on account of objection by the victim's father it is not possible to

solemnize the marriage. It is also pertinent to note that the victim had refused for medical examination of genitals. The letters annexed to the application also indicate that there was affair between victim and the co-accused. The applicant appears to have been implicated as he was close friend of the co-accused. Learned Sessions Court while granting bail to the co-accused who was arrested has also taken into consideration, the fact that there was a delay of seven months in lodging FIR and that the applicant therein had relied upon the certified copy of letter issued by Tanta Mukti Samiti which reveals the meeting wherein the question of marriage between victim and said accused was discussed. The allegations about spiking drinking water with stupefying substance does not inspire confidence since admittedly, the applicant and co-accused had met the victim suddenly and it was not preplanned meeting. In the light of the aforesaid circumstances, this application deserves to be allowed.

:: ORDER ::

- (i) Anticipatory Bail application No.1159 of 2017 is allowed.
- (ii) The applicant is directed to be released on bail on furnishing
P. R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five

Thousand only.) with one or more sureties in the like amount.

(iii) The applicant is directed to report Govandi Police Station, Mumbai once in a week on every Saturday between 11.00 am to 1.00 pm till further orders.

(iv) Applicant should not tamper with the prosecution witnesses / evidence.

(v) The applicant is directed to furnish the residential address to the investigating officer.

(vi) Application stands disposed of.

[PRAKASH D. NAIK, J.]