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

ANTICIPATORY BAIL APPLICATION NO. 128 OF 2019

Digambar Rohidas AgawaneApplicant

V/s.

The State of MaharashtraRespondent

Mr. Sachin H. Deokar advocate for the applicant
Ms. Rutuja Ambekar APP for the State

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 16, 2019.

P.C.

In Crime No. 577 of 2018 registered with Bharati Vidyapeeth City Police Station, Pune for offence punishable under Sections 376 (2)(n), 376(2)(f), 506(2) of the Indian Penal Code and under section 3(25) of Arms Act and under section 37(1) r/w 135 of Maharashtra Police Act, applicant is seeking pre-arrest bail.

2 The prosecution case against the present applicant is the victim aged 23 years old girl alleged that she started working in a company of which the applicant is one of the director. According to

her, on 08/03/2018, in the evening hours in the office premises, applicant has committed an offence under section 376 of the Indian Penal Code. She would then claimed that on 15/04/22018, present applicant called the victim girl to Panvel and repeated the act of rape resulting into registration of crime in question.

3 The learned counsel for the applicant submits that the case in hand is an example of how a person can be falsely involved in a serious offences like rape. According to him, apart from unexplained delay of more than 8 months in lodging F.I.R., the conduct of the complainant narrated in the F.I.R. does not repose any confidence in the theory put forth by the complainant or the prosecution against the applicant. According to him, applicant is having political identity and deep roots in the society. So as to malign his image, he has been roped in. The learned counsel would also submits that there is a false acquisition in some other crime against the applicant particularly on the issue of release of licenced revolver in favour of the applicant. According to him, initially the police authorities have shown the release of licenced revolver which was deposited by the

applicant with Phaltan Rural Police Station on 18/09/2017 which was actually released in favour of the applicant on 19/04/2018. It is claimed that police authorities therein have tampered the said record and shown that the same was released in February 2018. According to him, in pursuant to the complaint lodged by the complainant and threat of hunger strike, the Superintendent of Police was prompted to suspend the police officials in the said issue. As such he submits that there is no need of custodial interrogation as the applicant is very much available for the investigation.

4 The learned APP would strenuously oppose the prayer for grant of pre-arrest bail. The learned APP submits that the victim's statement recorded under section 164 of the Code of Criminal Procedure, 1973 in categorical terms implicate the applicant in a serious offence of rape. She would then urge that there are in all six offences registered against the applicant, details of which are as under:

(i) Crime no. 32/2012 registered with Phaltan Rural Police Station for offence punishable under sections 188

of the Indian Penal Code and under section 37 (1)(3) r/w section 135 of the Maharashtra Police Act

(ii) Crime no. 71/2015 registered with Phaltan Rural Police Station for offence punishable under sections 188, 447 r/w 34 of the Indian Penal Code

(iii) Crime no. 146/2017 registered with Phaltan Rural Police Station for offence punishable under sections 143, 147, 341 of the Indian Penal Code and under sections 37 (1)(3) r/w section 135 of the Maharashtra Police Act

(iv) Crime no. 267/2016 registered with Lonand Police Station for offence punishable under sections 504, 506 r/w 34 of the Indian Penal Code and under sections 39 & 45 of the Maharashtra Money Lending Act.

(v) Crime no. 458/2017 registered with Phaltan City Police Station for offence punishable under section 309 of the Indian Penal Code.

(vi) Crime no. 457/2018 registered with Phaltan Rural Police Station for offence punishable under sections 307, 353, 332, 333, 143, 147, 148, 149, 109, 120(B), 504 and 506 of the Indian Penal Code and under sections 37 (1)(3) r/w section 135 of the Maharashtra Police Act

5 She would then urge that of these total 6 offences, in two offences i.e. at serial nos. 5 & 6, applicant was already released on Ad-interim bail by this Court. Apart from above, according to her, investigation papers till date reflects *prima facie* involvement of the applicant in the crime in question. She would also rely upon the statement of other witnesses in addition to the statement of the victim.

6 Considered rival submissions.

7 Upon perusal of the contents in the F.I.R., what is noticed is the first event of rape claimed to have been occurred on 08/03/2018. After the said incident, victim girl continued to attend the office of the applicant alongwith other staff members and she had not complained anything about the said incident to the police, fellow employees or other directors of the firm. The second incident is claimed to have occurred on 15/04/2018. It is claimed that applicant called the victim girl in the office from her native place i.e. Solapur i.e. about more than 150 Kms under the pretext of meeting. She reached office in the evening, present applicant misguided her

by calling her for official meeting at Panvel. According to her, she attended the call of the applicant at Panvel and the applicant repeated the act of rape in a hotel.

8 Perusal of the documents which are seized from the hotel raised a serious dispute about the presence of the applicant in the hotel but for a photocopy of the driving licence of the applicant on the record of the said hotel. Neither the CCTV footage are seized nor the reception register is signed by the applicant to conclude that applicant stayed in the said hotel.

9 As far as the contention of the learned APP as regards the pendency of 6 offences against the applicant are concerned, perusal of the same *prima facie* reflects either the said offences are of non-cognizable nature being chapter proceedings or are non serious. This Court has already granted Ad-interim protection in favour of the applicant for offence referred at serial nos. 5 & 6. As such, pendency of the prosecution or registration of offence against the applicant will not preclude this Court from exercising discretion in favour of the applicant. Rather the conduct of the victim girl, particularly in the

backdrop in the events narrated in the complaint takes this Court to the only conclusion that in a calculated manner, she has intentionally lodged the complaint at a belated stage after unexplained delay of 8 months so that the relevant evidence viz. medical evidence, CCTV footage etc cannot be traced and considered against the applicant.

10 Apart from above, statement of fellow lady employee also does not repose any faith in the theory of the prosecution, particularly when the complainant for almost 8 months has not narrated the said incident to said employee though she was very much available and was working with her and was in deep friendship with her. After the alleged incident of rape, complainant regularly attended the office of the applicant, so also stayed with her family members in Solapur. The aforesaid conduct of the complainant of lodging delayed F.I.R. without any explanation, narration of imaginary allegation in the complaint which are not substantiated by the evidence till date, in my opinion, *prima facie* warrants this Court to grant protection in favour of the applicant. Hence, following order:

ORDER

(I) Application is allowed.

(II) In the event of arrest of the applicant in Crime No. 577 of 2018 registered with Bharati Vidyapeeth City Police Station, Pune, he be released on bail on furnishing P.R. bond in the sum of Rs. 50,000/- with sureties in the like amount.

(III) Applicant shall attend the Investigating Officer on every Monday and Thursday commencing from 21/01/2019 till 21/02/2019.

(IV) Applicant shall not influence the witnesses or tamper with evidence.

11 The learned counsel for the applicant on instructions volunteers to give all co-operation in the investigation including that of medical examination etc.

12 Application stands disposed of.

[NITIN W. SAMBRE, J.]