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IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CRIMINAL APPELLATE JURISDICTION******CRIMINAL APPEAL NO.1176 OF 2018***

Dipak Sarjerao Gavade	..Applicant.
V/s.	
The State of Maharashtra	..Respondent.

Ms.Manisha Devkar i/b. Prashant Hagare for the applicant.

Ms.Megha Bajoria for respondent No.2 (appointed).

Mr.A.R.Kapadnis, APP for respondent-State.

CORAM : NITIN W.SAMBRE, J.***DATE : NOVEMBER 4, 2019*****P.C. :-**

Heard respective counsel.

2. Applicant is seeking pre-arrest bail in Crime No.413/2018 for offences punishable under section 354 and 341 read with 34 of the Indian Penal Code and sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ('the POCSO Act' for short) and section 3(1)(r)(w) and section 3(2)(5a) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act, 1989 ('the Atrocities Act' for short), registered with Daund Police Station, District Pune.

3. The prosecution case is, victim was returning home after attending her school on June 12, 2018. She was accompanying her three classmates. At the said point of time, the applicant-accused came from behind and caught hold of the hand of the victim and expressed his desire to marry her. Threat was also claimed to have been issued to the extent that if she failed to respond positively, she will face dire consequences. As such, the offence in question came to be registered.

4. Submissions of learned counsel for the applicant while trying to make out a ground for pre-arrest bail are, the applicant is a student residing in the adjoining village. His intention was to make an offer of marriage to the victim girl and while giving such offer, there was no intention to commit any offence either under the provisions of POCSO Act or prevention of Atrocities Act. According to her, even otherwise, the necessary ingredients of the sections under which the applicant is booked are not satisfied. That being so, the applicant is claimed to be entitled for his release in case of his arrest. The applicant submits that he shall abide by appropriate reasonable conditions if his release is ordered.

5. While resisting the aforesaid submissions, learned

APP and learned counsel for the complainant would oppose the prayer for grant of bail, as according to them, the entire F.I.R. is required to be read as a whole and not in part. According to them, the satisfaction of ingredients of the sections under which the applicant is booked can be inferred from the language of the F.I.R. That being so, the application is liable to be rejected. It is also claimed that the applicant is absconding from the date of registration of the offence as such is not co-operating in the investigation.

6. Considered rival submissions.

7. Perused the contents in the F.I.R. so also statement of victim-complainant, statement of eye witnesses Priti daughter of Kantilal, Sakshi, Priya and Archana.

8. The complainant alleged in the F.I.R. that the applicant came from behind and expressed his desire of marrying her, by holding her hand. She nowhere narrates or it can be inferred from the language employed in the F.I.R., intention on the part of the applicant-accused can be gathered demanding sexual favours from the complainant. Rather, plain reading of her F.I.R. reflects that the applicant had given an offer of marriage to the victim or expressed his desire.

9. Apart from above, the fact remains that there is

unexplained delay of more than two days in lodging the F.I.R.

10. If the contents in the F.I.R. is appreciated in the backdrop of the requirement of the necessary ingredients of sections 354 and 341 of the IPC and section 3(1)(r)(w) and section 3(2)(5a) of the Atrocities Act and section 8 and 12 of the POCSO Act, same *prima facie* does not appear to have been satisfied.

11. In the aforesaid backdrop, in my opinion, a case for grant of pre-arrest bail is made out. Hence the following order:-

- i) In the event of arrest in Crime No.413/2018 for an offences punishable under section 354 and 341 read with 34 of the Indian Penal Code and sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 and section 3(1)(r)(w) and section 3(2)(5a) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act, 1989 registered with Daund Police Station, District Pune. the applicant be released on bail on his executing P.R. bond of Rs.25,000/- with one or more sureties in the like amount;
- ii) The applicant shall attend the investigating officer, Sub-Divisional Police Officer, Daund region, Daund on 8th, 9th

10th and 11th of November, 2019 between 10.00 a.m. to 12.00 noon;

- iii) Till the charge is framed against the applicant-accused, he shall keep himself away from the revenue jurisdiction of Daund and Shirur Talukas;
- iv) The applicant shall not influence the prosecution witnesses or tamper with the evidence.

12. Needless to clarify that the observations made herein shall not influence the investigation in any manner.

13. Since Ms.Megha Bijoria, learned counsel was appointed by this Court to assist in this matter on behalf of the complainant, professional fees payable to the said counsel be quantified as per the rules / schedule.

14. The appeal is disposed of accordingly.

(NITIN W.SAMBRE, J.)