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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ANTICIPATORY BAIL APPLICATION NO. 2707 OF 2018**

Rahul Subhash Jaju

.....Applicant

V/s.

The State of Maharashtra

.....Respondent

WITH**CRIMINAL APPLICATION NO. 10 OF 2019****IN****ANTICIPATORY BAIL APPLICATION NO. 2707 OF 2018**

Manisha Sahebrao Misal

....Intervener

IN THE MATTER BETWEEN

Rahul Subhash Jaju

.....Applicant

V/s.

The State of Maharashtra

.....Respondent

Mr. Dinesh Tiwari a/w Mikhail Dey, Pratik Kalanari i/b Dinesh
Tiwari Associates advocate for the Applicant

Ms. Rutuja Ambekar APP for the State

Mr. Ganesh Gole i/b Mr. Aarif Ali M Ali advocate for intervener

CORAM : NITIN W. SAMBRE, J.**DATE : JANUARY 14, 2019.**

P.C.

Heard the learned counsel for the Applicant, the learned APP and the learned counsel for the intervener.

2 In Crime No. 184/2018 for offence punishable under Section 376 of the Indian Penal Code registered with Nashik Police Station, Chandwad, Applicant is seeking pre-arrest bail.

3 The prosecution case against the present applicant is the complainant lodged a complaint on 12/11/2018 alleging therein that maternal aunt made a Will Deed in her favour executed on 05/01/1989. According to her, when she went for getting the said document copied in a Photostat centre, an unknown person sent the complainant to the office of present applicant. Applicant assuring necessary compliance with the Revenue Authorities *qua* mutation and other formalities, developed intimacy with the complainant, raped her in the month of May 2017. As such, crime in question.

4 The learned counsel for the applicant submits that apart from unexplained delay in lodging the complaint i.e. almost period of more than 16 months, the allegation in the F.I.R. are far away from truth. According to him, Applicant is implicated falsely in the crime in question.

5 *Per contra* the learned APP submits that there is statement of waiter justifying the story of the prosecution as regards the attribution against the present Applicant apart from the statement of the victim. According to her, though the photocopy of the Will Deed is seized from the custody of the complainant, applicant is the custodian of the original document and as such, custodial interrogation of the applicant is very much required.

6 Considered rival submissions. Perused case diary.

7 The perusal of F.I.R. depicts that complainant has narrated the incident of rape which had taken place in May 2017 for which she has lodged complaint almost after 16 months i.e. in November 2018

without any convincing explanation.

8 Apart from above, if the contents of the F.I.R., particularly as regards the scene of offence and photographs in the investigation papers depicting the scene of offence is verified, there is great veracity as the scene of offence is located just adjacent to highway as is reflected in the photos which are placed on record after the scene of offence was identified by the victim whereas in the F.I.R., scene of offence is narrated to be located much inside the highway.

9 Apart from above, the fact remains that applicant has volunteered to surrender his mobile instrument alongwith sim-card which he was using since January 2017 till date. A candid statement on instructions in the form of undertaking is made by the learned counsel for the applicant that he is neither in a possession of the original document dated 05/01/1989 in the form of Will nor he has any commercial or otherwise interest in the property which is the subject matter of the said Will. Since the statement is made on instructions, same is accepted as undertaking.

10 Apart from above, there is no convincing material on the record to *prima facie* believe the story of the victim that she was subjected to crime in question including that of any medical record or otherwise. That being so, application for pre-arrest bail is made out. Hence, following order:

ORDER

(I) Application is allowed.

(II) In the event of arrest of applicant in Crime No. 184/2018 registered with Nashik Police Station, Chandwad, he be released on bail on furnishing P.R. bond in the sum of Rs. 50,000/- with one or two sureties in the like amount.

(III) Applicant shall attend the Investigating Officer on 22nd, 25th and 29th of January, 2019 between 10.00 a.m. to 12.00 noon and thereafter as and when directed.

(IV) Applicant shall co-operate with the investigation.

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

11 Application stands disposed of. Intervention application also stands disposed of.

[NITIN W. SAMBRE, J.]