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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 2244 OF 2023

KRUSHNA RAMKISAN TUPE

....Applicant

VERSUS

THE STATE OF MAHARASHTRA

.....Respondent

.....

Advocate for Applicant : Mr. GHANEKAR NILESH S.

APP for Respondents: Mr. S.A. Gaikwad.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 22nd DECEMBER, 2023

ORDER :-

1. The applicant seeks regular bail in connection with Crime No. 478 of 2023 dated 7.11.2023 registered with Police Station Mukundwadi, District Aurangabad, for the offences punishable under Sections 376, 376-D, 506 of IPC.

2. The investigation was set in motion on the basis of information given by the victim herself, wherein, she alleges that proposal for her marriage with the applicant was received. However, her family members were not agreeable to the same. However, the applicant was pursuing her to marry with him. He gave threats to commit suicide and implicate her family members in crime. In October, 2022, he took her in a hotel near Daulatabad and forcibly established physical relations, further threatened not to disclose the same to anyone. Since April, 2023, the informant shifted to Thane in pursuance of her employment. On 18.6.2023, the applicant reached to her work place and gave threat. On 6.11.2023, the informant disclosed her parents about misconduct of the applicant. It is further alleged that the applicant gave threat

to commit suicide if the victim failed to marry him. Accordingly, the aforesaid crime came to be registered. The applicant has been arrested on 7.11.2023. Since then, he is behind bars. His prayer for grant of bail has been rejected by the Court of Sessions vide order dated 4.12.2023.

3. Mr. Ghanekar, learned advocate appearing for the applicant would submit that the victim was in relationship with the applicant. However, the parents of the victim are against said relationship. Therefore, a false complaint is made implicating the applicant in this crime. He would point out that the incident rape as mentioned in the FIR took place in October, 2022. However, reported to none for 13 months till present complaint is lodged.

4. Learned APP, so also, learned advocate appearing for the victim vehemently oppose the prayer for grant of bail. They would point out that there are specific allegations regarding forcible sexual relationship established by applicant. Similarly, he continued to give threats to the life and limb of the victim and her family members. Learned advocate for the complainant invites attention of this court to the trail of messages sent by applicant depicting the threats.

5. Considering the submissions advanced, it can be gathered from the contents of the FIR that the alleged incident of rape is of October, 2022. Thereafter, the allegations are made that the applicant is continuously pursuing the first informant and her family members for marriage under threat of suicide. It appears that in October, 2022, the victim who is major and a working woman, went with the applicant to Daulatabad and they had physical relations in the rented hotel room. She did not complain about same to anyone. Apparently, such relationship was consensual in nature. Subsequent allegations in the FIR shows that applicant persuaded for marriage with the victim, however, her family members were not in favour of such relationship. The last incident narrated in the FIR is dated 6.11.2023 when the applicant gave threat to victim's mother to consume poison.

6. If the aforesaid circumstances are taken into consideration, prima facie, it is difficult to believe that the offence under Section 376 would attract in the facts of the case. Possibility of consensual relation between victim and applicant cannot be ruled out. The applicant is behind bars for more than 46 days by this time. Further detention of the applicant is not warranted in the facts of the case. However, release of the applicant shall be subject to stringent conditions so as to protect the interest of the prosecution and prosecutrix. Hence, the following order. The observations made hereinabove are based on prima facie consideration of material placed before this Court and limited for disposal of this application.

: O R D E R :

- (I) The application is allowed.
- (ii) Applicant – Krushna Ramkisan Tupe, be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- (rupees fifty thousand) with one solvent surety of the like amount, in connection with Crime No. 478 of 2023 dated 7.11.2023 registered with Police Station Mukundwadi, District Aurangabad, for the offences punishable under Sections 376, 376-D, 506 of IPC, on the following conditions :-
 - (a) He shall not tamper with the prosecution evidence.
 - (b) He shall not make any attempt to establish contact with the prosecutrix or enter in the premises of her workplace at Thane or her places of residence at Aurangabad and Thane.
 - (b) He shall not contact with other witness in this crime.
 - (c) He shall attend the police station once in a week i.e. on every Monday between 11.00 a.m. to 2.00 p.m. till filing of charge sheet and cooperate with investigation.
- (iii) The application stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-