

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 774 OF 2015

Birappa Devappa Masal	... Applicant
Vs.	
The State of Maharashtra	... Respondent

Mr. Kuldeep U. Nikam, Advocate for the Applicant.

Mr.S.S. Pednekar, APP for Respondent – State.

I.O. Mr. A.D. Katte, P.S.I., Jath Police Station present.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **JUNE 15, 2015**

P.C.:

The applicant/accused has moved this Application under section 438 of the Criminal Procedure Code, as he apprehends arrest in C.R. No. 84 of 2015 registered with Jath Police Station. The applicant/accused is facing charges under section 376(2) of the Indian Penal Code, under section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under section 7(1)(d) of Protection of Civil Rights Act. The FIR is registered on 25th April, 2015.

2. It is the case of the prosecutrix that she knew applicant/accused, who is working in Border Security Force, since 2008. The prosecutrix got married to some other person in 2009. However, as per the case of the prosecution, the applicant/accused seduced her and instigated to leave her husband because he wanted to marry her. She, therefore, left her

husband and started residing with her mother. Thereafter, the applicant/accused and complainant had sexual relationship. She got pregnant out of this relationship. Her mother realized this when she had completed 8 months of pregnancy. The prosecutrix delivered a baby girl. Thereafter also, applicant/accused and complainant again were having sexual relations. It is the case of the prosecutrix that she was ready to keep sexual relationship because a promise was given by the applicant/accused that he would marry her after getting job. However, later on he refused to marry her. In 2014, the prosecutrix got married to some other person. Again, the applicant/accused induced her to leave her husband and he showed his readiness to marry her in the Village meeting dated 8th April, 2015. However, he expressed his inability to marry her as there was opposition from his house because she belonged to SC community. Thereafter again, they had sexual relations and then she found that applicant/accused has stopped contacting her. So, the prosecutrix approached the police and gave this FIR.

3. The learned counsel for the applicant/accused submitted that the allegations are false. However, even assuming that the allegations are true, there was consent from the girl. He submitted that the applicant/accused is now married and he is working in Border Security Force .

4. Learned APP opposed the Application. He submitted that the girl child is born out of this relationship. The learned APP, on instructions from the police, have submitted that the mother of the prosecutrix is from Devdasi Community and this being the girl child, there is every possibility that the girl child may be put in the same profession. He submitted that this Application is not to be allowed. However, if this Application is allowed, some protection of the girl child may be imposed.

5. On perusal of the contents, it *prima facie* appears that it is not a case under section 376(2). However, considering the family background of the prosecutrix and as per the say of the prosecutrix, a girl child is born out of the relationship between the applicant/accused and prosecutrix, while protecting the applicant/accused by granting pre-arrest bail, I am of the view that following conditions may be imposed on him:

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest, the applicant/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs. 20,000/-, with one surety in the like amount;
- (iii) The applicant shall cooperate with the Investigating Officer and attend the concerned police station on 16th June, 2016 in the morning at 10 a.m. Investigating officer is directed to interrogate and conduct test till 6

p.m.

(iv) The applicant/accused is hereby directed to deposit Rs.1,00,000/- in the Court of J.M.F.C., Jath in the name of minor girl without prejudice.

(v) Learned JMFC is directed to deposit this amount in Fixed Deposit in any nationalized bank.

(vi) It is also specifically ordered that this amount is not to be allowed to be withdrawn in between the trial. The annual interest of the said amount can be withdrawn by the prosecutrix for a girl child.

(vii) Learned JMFC to take note of it and take further decision and pass order at the end of trial in respect of this amount.

(viii) Breach of any of the conditions will amount to cancellation of bail forthwith.

6. The Application stands disposed of on above terms.

(MRS.MRIDULA BHATKAR, J.)