

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAILAPPLICATION NO. 29 OF 2015

Gorakhnath Baban Rao	...	Applicant
vs.		
The State of Maharashtra	...	Respondents

WITH

INTERVENTIION APPLICATION NO. 32 OF 2015

Yogita Baban Vasave	...	Intervenor
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In the matter between:

Gorakhnath Baban Rao	..	Applicant
vs.		
The State of Maharashtra	..	Respondent

Mr. Ganesh Gole a/w Mr. Ritesh Ratnam, Advocate for the applicant
Mr.Vivek Salunke, for the Intervenor.
Ms. P.P.Shinde, APP, for the respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 15th January, 2015.

P.C.

Heard. This is an application under Section 438 of the Code of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in Crime No.342/2014 registered at Panchavati Police Station, Dist. Nashik, for the offences punishable under Sections 376, 376(2), 420, 323, 504, 506 of IPC and under Sections 3 (10(xii), 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989.

2. It is the case of the prosecution that the prosecutrix herein who happens to be a public servant (Gram Sevak) in Niphad Taluka lodged a report at the police station alleging therein that she is a public servant. That when she was preparing for her Public Service Examination, she had met the present applicant. Their acquaintance had culminated into love. It is alleged that the applicant had assured her that he would get married to her and hence placing reliance upon the assurance given by the applicant, she had consensual sex with the applicant. It is further alleged that on 1.12.2010, the applicant and the complainant had been to Saptashrangi, Nashik in a temple and had got married by exchanging garlands. The applicant had taken the complainant to his house and had informed his parents that he has got married to the complainant. He had also informed his parents that the parents of the complainant have no knowledge about the said marriage. They had resided together in a room. In the year 2011, the applicant had got selected as a PSI. Thereafter, the complainant had insisted upon him to get legally married to her. His parents had told her that only after the training, they would permit them to have a legal marriage. The applicant had been to Sangli for training. Whenever he returned to Nashik, he used to call upon her and have sexual intercourse with her. It is further alleged that he had insisted upon her to fetch Rs.15 lakhs to purchase a house. After he was posted at Kanjurmarg

Police Station, Mumbai, the complainant and the applicant were residing as husband and wife at Kalyan. She was insisting upon him for a legal marriage. He was demanding for money. It is alleged that after some time he had informed the complainant that he has got married to a girl named Monal Dilip Katore from Nasik and, therefore, had refused to have a registered marriage with the complainant. On the basis of her report, Crime No.342 of 2013 is registered against the applicant for the offence punishable under Sections 376, 420, 323, 504, 506 read with Section 34 of IPC.

3. The learned counsel for the applicant has submitted that the complainant is about 29 years old. The learned counsel has drawn attention of this Court to the previous proceedings initiated by the sister of the complainant i.e. Pratibha Vasave on 29.3.2014. On 29.3.2014, the sister of the complainant had lodged a report at the police station that the applicant herein had assured her sister of marriage. It was alleged that whenever her sister insisted upon a legal marriage, the applicant used to abuse her by referring to her caste. That he had threatened her of dire consequences. It was alleged that he had given her false promise of marriage. It is alleged that the applicant had given an undertaking before the police that he would get married to the present complainant. The police were informed that the complainant has threat perception from the present

applicant. On the same day i.e. 29.3.2014, the parents of the present complainant had also lodged a report on similar lines against the present applicant. The police had initiated enquiry. On 1.4.2014, the statement of the present complainant was recorded. She had stated before the police that in fact, the parents of the present applicant had taken a proposal for marriage to her parents and, therefore, her parents had learnt about the love affair between the complainant and the present applicant. She has specifically stated that she wanted to appear for the Examination conducted by the Public Service Commission and had ambitions to become an officer and therefore, she did not intend to get married at that stage. She had also disclosed that it was decided amongst them that they would first build their career and after training they would perform the marriage. She had also disclosed that her parents were pressurizing the applicant to get married to the prosecutrix. That her parents had forced her to give applications against the present applicant. She had voluntarily disclosed that the applicant had not cheated her in any way and that they had decided to get married subsequently. According to her, her parents were coercing the present applicant to get married to the prosecutrix. The said statement is signed by the present complainant.

4. The learned counsel for the applicant appearing for the original complainant has vehemently submitted that in fact she had consensual sex with

the applicant only because he had promised to marry her. It is also submitted that the applicant has entered into second marriage and therefore, he has cheated her and that consent stands vitiated for non-fulfillment of the promise/assurance. In the present case, the recitals of the FIR would show that the applicant and the complainant had got married in temple and thereafter the applicant had even informed his parents about their marriage. That she had initially stated before the police that they would get married only after they pursue their career and she wishes to become an officer. They had lived as husband and wife at Kalyan even after he had got regular posting at Kanjurmrg Police Station, Mumbai. It therefore cannot be said that the consent was obtained by fraud or by cheating. The fact that they had got married in a temple and only that the marriage was not registered cannot be termed as the act of the applicant as an offence under Section 376 of IPC. The applicant and the complainant are public servants

5. The learned APP submits that the applicant is also guilty of moral turpitude. However, in the present scenario, considering the fact that she had given a statement on the earlier occasion that she was voluntarily staying with the applicant and that they had decided to get married subsequently, it cannot be, prima facie, said that it would be an offence under Section 376 of IPC.

6. It is submitted on behalf of the complainant that the complainant proposes to prosecute the applicant under Section 494 of IPC. By inference it can be said that the complainant assumes the status of first wife. Prima facie, it cannot be said that the consent stands vitiated as it was not obtained by fraud.

7. The observations made hereinabove are prima facie in nature and not to be relied upon for quashing of FIR or discharge application or at the time of trial.

ORDER

The application is allowed. In the event of his arrest, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount.

Application is allowed and disposed of.

7. Intervention Application is heard, allowed and disposed of.

(SMT.SADHANA S.JADHAV, J.)