

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

Criminal Application No. 2847 of 2016

District : Beed

Sunil s/o. Vishwanath Golhar,
Age : 50 years,
Occupation : Agriculture,
R/o. Bavi, Taluka : Ashti,
District : Beed.

.. Applicant.

versus

The State of Maharashtra,
Through Police Station Officer,
Ashti Police Station,
Taluka : Ashti,
District : Beed.

.. Respondent.

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Mr. V.M. Chate, Advocate, for the applicant.

*Mr. S.J. Salgare, Addl. Public Prosecutor, for
the respondent.*

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CORAM : N.W. SAMBRE, J.

DATE : 13TH JUNE 2016

ORAL ORDER :

Heard.

2. The applicant is seeking pre-arrest bail in Crime No. 83/2016, registered on 13th April 2016, for an alleged incident which took place from 9th April

2016 till the date of lodging of the complaint.

3. The prosecution case is that the complainant Sunanda after getting divorce from her husband Vikas Tandale, was allured by the present applicant with a false promise of marriage and there was sexual intercourse. The complaint has result into lodging of the crime in question for the offences punishable under Sections 376(2), 323, 354(A), 504, 506, read with Section 34 of the Indian Penal Code.

4. From the perusal of the contents of the FIR and the other investigation papers, it could be noted that after divorce from her husband, the complainant joined group of performers and came in contact with the present applicant. She has also stated that though she was knowing that the applicant was married and he was having children, still she voluntarily stayed with the applicant as the applicant had given a promise to her that he would marry with her.

5. In the above background, while trying to make out a case for pre-arrest bail, the learned Counsel for the applicant would urge that the consent of the present applicant qua the alleged offence under Section 376(2) of the IPC is apparent from the length of relationship of the complainant with the applicant. According to him, the custodial interrogation of the applicant is not necessary as

the applicant volunteers to surrender his vehicle which is named in the FIR, with the Investigating Officer, within a period of one week from today. The learned Counsel for the applicant, upon instructions, submits that the applicant is ready and willing to give blood sample and will cooperate further in all required procedures to be followed so as to find out the DNA of the complainant's foetus, if matches with that of the applicant. He would then submit that the history as narrated in the FIR speaks voluminous about conduct of the complainant as she was earlier booked under the PITA Act. He would then submit that in the absence of any criminal antecedents against the applicant and the fact that the applicant is ready to cooperate with the investigation, his custodial interrogation in the given set of narration in the FIR is not warranted.

6. The learned Addl. Public Prosecutor appearing for the State opposed the application on the ground that even if the applicant is ready and willing to give blood sample for DNA test and ready to surrender the vehicle, still there is other facet of the matter which is required to be investigated into i.e. assault made by the present applicant along with 7 - 8 other persons on the complainant.

7. Upon perusal of the papers of investigation, as is carried out in the background what has been

alleged in the FIR, it could be inferred that the applicant was having longstanding physical relationship with the applicant, knowing fully well that the applicant is a married person, as she has stated in the complaint that she stayed with the applicant inspite of having knowledge of the said fact. It is not in dispute that the complainant Sunanda was earlier booked for an offence under PITA Act. She had also refused to go with her parents when she was called upon to do so. She had also made wild allegations against her own father.

8. In the aforesaid background, in my opinion, the custodial interrogation of the applicant, particularly looking to the probability of story narrated in the FIR, appears to be not required. As such, applicant deserves to be granted pre-arrest bail in connection with the crime in question.

9. Hence, the Application is allowed with the following directions :-

(a) In the event of arrest of the applicant, in connection with Crime No. 83/2016, registered with Police Station, Ashti, District Beed, for the offences punishable under Sections 376(2), 323, 354(A), 504, 506, read with Section 34 of the IPC, he be released on bail, upon his executing P.R. Bond of Rs. 25,000/- with one surety in the like amount.

(b) The applicant shall attend the concerned Police Station initially on 25th, 26th and 27th June 2016, between 10.00 a.m. and 12.00 noon and thereafter as and when called by the Investigating Officer.

(c) The applicant shall surrender the vehicle involved in the crime i.e. Indica Car bearing registration No. MH-12/1280 with the Investigation Officer.

(d) The undertaking given by the applicant, that he is ready and willing to give blood sample for DNA test, if required and suggested by the Investigating Officer, is accepted.

(e) Any attempt on the part of the applicant to infringe the conditions as set out above, would entitle the Investigating Officer to straightway approach this Court with a prayer for cancellation of pre-arrest bail.

10. The Application stands disposed of in the above terms.

(N.W. SAMBRE)
JUDGE

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