

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 181 OF 2016

Nikhil Dashrath Borawake ..Applicant

v/s.

The State of Maharashtra. ..Respondents

Mr. Dayanand C. Awari for the Applicant
Mrs. R.M.Gadhvi, APP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : JANUARY 29, 2016.**

P.C.

1. This is an application for bail filed by the aforesaid applicant who has been arrested in Crime No. 224 of 2015 registered with Vanavadi Police Station, Pune City for offences punishable under Section 376, 506 of the Indian Penal Code.
2. The case of the prosecution in brief is that the applicant herein had committed rape on the prosecutrix under the threat of causing harm to her husband. The said crime was registered pursuant to the FIR dated 4.9.2015, lodged by the prosecutrix. The applicant was

arrested on the same day. The said crime was investigated and upon completion of investigation chargesheet was filed and subsequently the case being Sessions triable, was committed to the Court of Sessions Judge, Pune.

3. The applicant herein had filed application for bail which has been dismissed by the learned Addl. Sessions Judge by order dated 8.1.2016. Hence the present application.

4. Mr. Awari, the learned Counsel for the applicant submits that the FIR prima facie does not disclose ingredients of Section 376 IPC. He submits that the act at the most can be considered to be consensual and not against will or without the consent of the prosecutrix. He has submitted that the applicant was arrested on 4.9.2015, and he is in custody since long and as such his presence is no longer required in custody. He therefore prays that the applicant be released on bail.

5. The learned APP submits that the FIR as well as the supplementary statement of the prosecutrix prima facie reveals that the applicant had subjected her to rape. She has further stated that the prosecutrix is being pressurized to withdraw the complaint.

She therefore claims that the applicant is not entitled for bail.

6. I have perused the records and considered the arguments advanced by the learned counsel for the applicant and the learned APP for the State. The FIR prima facie reveals that the prosecutrix is a married lady having two children. Her statement further reveals that the applicant was known to her since July 14 and since then he had been visiting her house and that he has been having physical relations with her. The prosecutrix has claimed that the applicant herein had subjected her to rape by threatening to cause death of her husband. It is to be noted that the prosecutrix had not reported this matter either to her husband or any of her family members and had also not lodged any FIR against the applicant. On the contrary, the material on record, more particularly the chat details prima facie reveals that the applicant and the prosecutrix were knowing each other and were having friendly relations. Thus the records prima facie indicates that the relation was consensual.

7. The above facts and circumstances, in my considered view do not justify further detention of the applicant in custody. Hence the application is allowed on the following terms and conditions:

- i) The applicant above, arrested in Crime No.224 of 2015 registered with Wanawadi Police Station, Pune, be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twentyfive Thousand Only) with one solvent surety in the like amount to the satisfaction of the learned Sessions Judge, Pune.
- ii) The applicant shall not interfere with the victim or any other witness in any manner.
- iii) The applicant shall furnish to the Investigating Officer his contact number, and his temporary as well as permanent address. The Investigating Officer shall verify the same before the applicant is released on bail.

(ANUJA PRABHUDESSAI, J.)