

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.189 OF 2016

Karna Balmukund Joshi	... Applicant
vs.	
The State of Maharashtra	... Respondent

Mr. A.P. Mundargi, Senior Advocate i/b. Mr. D.H. Shukla,
for the Applicant.

Mrs. P.P. Shinde, APP for Respondent – State.

Mr. S.V. Gavand, Advocate for the Intervener.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **5th APRIL, 2016**

P.C.:

. The application is moved for pre arrest bail as the applicant/accused is facing charges for the offences punishable under Sections 493, 420, 376 and 354(1)(IV) of the Indian Penal Code in C.R. No. I-354 of 2015 registered with Nerul police station, Navi Mumbai. The offence is registered at the instance of prosecutrix on 24th December, 2015.

2. It is the case of prosecutrix that she got married in 2005 with one Abhishekh Choudhari. One son born out of their wedlock.

However, in the year 2009 she left the house. She took divorce from her husband and was residing along with her son at Nerul. It is her case that in the year 2009 she got acquainted with the applicant /accused who is the resident of Valsad, Gujrat. He knew about her life. He gave her moral support. Then in March, 2012 he took her to Shirdi and promised her that he wanted to marry her and they along with her son stayed there. The applicant/accused was six years younger to her. In October, 2010, the applicant/accused started residing together with her and her son like husband and wife. Thereafter, they he had sexual relations with her. He used to attend parents meeting of her son Aarush as a father. After the prosecutrix got divorce from her husband in the year 2013 she insisted the applicant/accused to marry. However, he avoided her. In January, 2015, the applicant/accused went to Himachal Pradesh on account of his transfer. Thereafter, he stopped contacting her. Therefore, the prosecutrix went to Chandigardh and met with the applicant/accused. At that time, he told her that he is engaged with some other lady and refused to marry with the prosecutrix. Thereafter, the prosecutrix filed a criminal case against him.

3. The learned counsel for the applicant/accused submits that the applicant/accused is innocent. He has never promised the prosecutrix to marry. He had not done any offence. He will not jump the bail, if pre arrest bail is granted to the applicant. In support of his contentions, the learned counsel relied on the ratio laid down in the case of “State of Uttar Pradesh vs. Naushad, 2013 DGLS (Soft.) 919”.

4. The learned prosecutor while opposing the application has submitted that the applicant/accused was in relation with the prosecutrix nearly for five years. They both live like husband and wife and he was ready to take responsibility of the son of prosecutrix. She kept physical relationship with him as the applicant promised her to marry. However, he exploited her. Hence, the application may be rejected.

5. Perused the first information report. The prosecutrix is 36 years old. Her son is aged 6-7 years. It appears that the applicant and the prosecutrix both were involved with each other mentally as well as physically. There may be many reasons for the denial to marry. The

applicant/accused cannot be prosecuted for the offence punishable under Section 376 of Indian Penal Code. The complainant is elder to the applicant/accused by age and thus it is to be inferred that she was aware about the consequences of keeping sexual relationship with the applicant/accused without marriage. In the case referred above by the learned counsel for the applicant/accused, the prosecutrix was 15 years old. The accused enticed her under the promise of marriage. Thus the facts of the said case and the facts of the present case are totally different and therefore the words “without her consent” means “without free consent” cannot be applied in the present case.

6. In view of above, I am inclined to grant pre arrest bail to the applicant/accused on the following terms and conditions.

- a) In the event of arrest, the applicant/accused be enlarged on bail upon furnishing P. R. Bond in the sum of Rs. 20,000/- with one or two solvent sureties in the like amount;
- b) The applicant shall not tamper with the evidence;
- c) The applicant shall not indulge into any other criminal activity hereinafter;
- d) The applicant shall cooperate with the Investigating

Officer and shall attend concerned police station once in a week on every Saturday between 6.00 pm to 8.00 pm till 6th May, 2016.

(MRS.MRIDULA BHATKAR, J.)