

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

ANTICIPATORY BAIL APPLICATION NO.982 OF 2016

Satyajit Baban Mashke	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

....

Mr.S.V.Marwadi i/b. Mr.Sharon Patole, Advocate for the Applicant.
Mr.S.H.Yadav, APP for the Respondent/State.
Mr.Abhijeet Patil, IO, PSI, Arnala Costal Police Station, Virar (W),
Vasai, Dist.Palghar is present in person.

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CORAM : P. N. DESHMUKH J.

DATED : 8th AUGUST 2016.

P.C.

1 Applicant apprehending his arrest in Crime No.I-88 of 2016 registered by Arnala Police Station for the offence punishable under Sections 376, 417, 323 of the Indian Penal Code, has sought anticipatory bail.

2 Heard.

3 The learned counsel for the applicant submits that prosecutrix is aged 22 years and in her report has alleged of some forceful intercourse by applicant with her in the year 2011 of which report is lodged on 24/05/2016. It is contended that from the contents of report, it can only be said that the prosecutrix had consented for such act with the applicant and therefore no provisions of Section 376 of the Indian Penal Code can be attracted. It is further case of applicant that

complainant though willfully kept physical relations with him, it is only after he got married on 18th May 2016, report came to be lodged against him alleging that applicant on false pretext of marrying prosecutrix sexually exploited her. Application is, therefore, prayed to be allowed.

4 The learned Additional Public Prosecutor opposed the application on the ground that investigation is in progress and on the ground that as per report since she, for the first time, was sexually assaulted by applicant on 06/05/2011, on that date she was minor below 18 years of age as according to her school leaving certificate, her date of birth is 10/12/1993. The learned Additional Public Prosecutor has thus submitted that application is liable to be rejected on this count alone as prosecutrix was minor, and thus her consent, if any, is of no consequences.

5 On perusal of report, it is found that complainant met with applicant in the year 2009, when she was at her native place and since then both of them developed friendship and as such they were meeting with each other even when they were in Mumbai. In this background, on 06/05/2011, complainant arrived at Virar as called by applicant and from there both of them went to a resort and indulge into the sexual act, which is stated by complainant to be against her wish. From the further contents of report, it is found that from that date i.e. 06/05/2011 till 04/07/2015 i.e. almost for a period of five years both of them indulged in maintaining sexual relations on number of occasions.

From further contents of report, it reveals that it is only on 18/05/2016 complainant learnt about applicant's getting married in Mumbai on 19/05/2016, when she filed the complaint on the basis of which present offence is registered on 25/05/2016 against the applicant.

6 Having considering the fact of applicant and complainant keeping physical contact for a long span of five years, it is difficult to rely upon the case of prosecutrix maintaining such physical relations against her wish only on the ground that applicant had agreed to marry her.

7 With reference to the age of prosecutrix, it is to be noted that according to case of prosecution the incident in question is dated 06/05/2011, on which date the prosecutrix was minor as she was below 16 years. Thus, even if case of prosecution is accepted as it is, it is necessary to consider that Section 375 of the Indian Penal Code is amended with effect from 03/02/2013, vide which age of minor is extended up to 18 years.

8 In that view of the matter, case of prosecution fails on this ground also. In the given circumstances, and since applicant, while on interim protection, has admittedly attended the Investigating Officer, interim protection granted to applicant on 14/06/2016 is liable to be confirmed on same terms and conditions except for further directing applicant, here after to attend Investigating Officer as and when called and to not to tamper with the evidence, nor shall attempt to meet the prosecutrix any time, pending trial.

9 In the circumstances, application is allowed in above terms.

(P. N. DESHMUKH J.)