

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1531 OF 2016

Sagar Manik Lonkar. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Aniket U. Nikam i/b. Mr. Aashish Satpute, advocate for Applicant.

Mr. Prashant Jadhav, APP for State.

Mr. R.K. Waikar, PSI, Haveli Police Station, Pune(Gramin).

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 31, 2016**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in Crime No. 332 of 2016 registered at Haveli Police Station on 28/8/2016 for the offence punishable under Section 376(2)(n), 323, 506 of the Indian Penal Code.

3 It is the case of the prosecution that on 28/8/2016 Ms. X lodged a report at the police station alleging therein that on 31/12/2007 at about 11.45 a.m she had called her friend Mangesh on his cell phone and some person had received phone and talked to her. On the next day, when she again called, she was informed that the applicant has spoken to her under the guise of Mangesh. Thereafter, she met him on various occasions since February, 2008. That she had met the applicant at Khadakwasala and they had developed friendship. Thereafter, the relationship had become intimate. It is alleged that the applicant had assured that he would get married to her after his sister is married. That they were visiting Ashoka Lodge. On one occasion, he had sexual relations with her on the ground that they were going to get married. He had indulged into the same act on several occasions. Thereafter, his sister and brother had got married and therefore, she started insisting upon the applicant to get married with her. However, there was no response. It is alleged that thereafter also he called upon her and refused to get married with

her. He had threatened that in the eventuality, she would disclose about their relationship to anybody, she would have to face dire consequences. The applicant was working with Navneet Publications. It is alleged that since there is denial to marry and that she had sexual relations with him on the assurance of marriage, the applicant has committed an offence punishable under Section 376(2)(n) of the Indian Penal Code.

4 The learned Counsel for the applicant submits that the informant had relations with the applicant and that the act alleged has been consensual act, even according to the informant and therefore, it cannot be said that the applicant is liable to be punished under Section 376(2)(n) of the Indian Penal Code.

5 As against this, the learned APP on the basis of the papers of investigation and instructions submits that it needs to be considered that the informant was permissive only because there was an assurance to marriage and that the applicant has played deceit upon

her and therefore, it should be inferred that the act was without her consent under the garb of assurance to get married.

6 Taking into consideration the nature of allegations and the contentions in the first information report, prima facie it appears that the applicant was in relationship with first informant. The informant had attained majority and was aware of the consequences of her act. That denial to marry cannot be considered as an offence punishable under section 376 of the Indian Penal Code. At the most, it can be said that the applicant has turned down the promise. The first information report is not filed for an offence punishable under Section 420 of the Indian Penal Code and hence, the applicant deserves to be granted pre-arrest bail.

7 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 438 of the Code of Criminal Procedure, 1973. The learned Sessions Judge shall not be influenced by the same at the

time of deciding the application for discharge or quashing of FIR or at the time of trial.

8 Hence, the following order is passed :

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in C.R. No. 332 of 2016, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or two sureties in the like amount.
- (iii) The applicant shall not tamper with the evidence.
- (iv) The applicant shall report to the concerned police station on four consecutive Saturdays commencing from 3/9/2016 to 24/9/2016, both days inclusive between 10 a.m. to 12 noon and cooperate with the investigating agency.

9 The application stands disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)