

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1590 OF 2016

The State of Maharashtra. ... Respondent.

Mr. Rajiv Patil, Sr. Counsel i/b. Mr. Vishal L. Kolekar, advocate for Applicant.

Mr. Prashant Jadhav, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : SEPTEMBER 16, 2016

P.C.:

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

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. 47 of 2016 registered at Kasegaon Police Station for

offence punishable under Section 376, 313, 406, 504, 506 of the Indian Penal Code.

3 It is the case of the prosecution that the complainant namely Nitu Rohit Akale was married to one Rohit Akale on 17/8/2006. The couple is blessed with a daughter in 2008, who is named as Sargam. Subsequently, she learnt that her husband Rohit had criminal antecedents. He was arrested by the police. That one fine day, the applicant who happens to be the so-called friend of Rohit met the complainant in the year 2010. He informed her that she should not worry, as he is willing to take care of her and her daughter. According to the complainant, the applicant had expressed his love for the complainant. He had also informed her that he happens to be the Upsarpanch of the village and that he would make her life comfortable. In 2011 he had rented a room for the complainant in Malkapur Koyana Vasahat at Karad. She was staying there alongwith her daughter Sargam. A maid namely, Sharada was also engaged for the convenience of the complainant. The complainant has further

alleged that the applicant had also assured the paternal uncle of the complainant that he would get married with the complainant. She was carrying pregnancy in 2012. That she was insisting upon the applicant to get married to her. She was taken to Dr. Amar Patil. On 13/7/2016 she has also undergone sonography. The applicant had allegedly administered some tablets to the complainant on 14/7/2016. On 15/7/2016 the pregnancy was aborted. According to the complainant, it was the effect of the tablet administered by the present applicant. She has alleged that the applicant had sexual intercourse with her on several occasions. It appears that the applicant is alleged to have committed breach of promise to marry the complainant and hence, the offence.

4 The learned Senior Counsel appearing for the applicant submits on the basis of the record that, way back on 19/4/2015 the complainant and the applicant had filed an affidavit in the court of Judicial Magistrate First Class, Walva and it was contended in the said affidavit that they had intimate relations for almost 3 years and that

they have voluntarily decided to part ways and since then there were no relations between the complainant and the applicant. It also appears from the record that on 17/8/2016 the applicant had informed the District Superintendent of Police, Sangli that the complainant is threatening him of initiating prosecution. That an advocate namely Irfan Mulla had also called upon the applicant and informed that it would be better to settle the terms across the table. The letter was received by Kasegaon Police Station.

5 Taking into consideration the nature of allegations and the papers of investigation, submissions advanced across the bar, it clearly appears that there was consensual sex between the complainant and the applicant. They had resided at Malkapur, Karad. In 2015 itself they had filed an affidavit stating therein that they have parted ways voluntarily. It prima facie appears that the relations between the complainant and the applicant were intimate and that a discordant note had struck between them. However, breach of promise to marry, would prima facie, not amount to

offence punishable under Section 376 of the Indian Penal Code.

Hence, the applicant deserves to be granted pre-arrest bail.

6 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 Judge shall not be influenced by the same while deciding the application for discharge or quashing of FIR or at the time of trial.

7 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) In the event of arrest in Crime No. 47/2016, 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 police station as and when called by the Investigating Officer and cooperate with the investigating agency to the best of his capacity.

8 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)