

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3431 OF 2017

MANOJ S/O MADHUKAR DESALE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Palsikar Vikrant S.
APP for Respondents: Mr. A. S. Shinde

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CORAM : V. K. JADHAV, J.
DATED : 10th AUGUST, 2017

PER COURT:-

1. By this application, the applicant is seeking pre-arrest bail in connection with crime No. 0229 of 2017 registered at MIDC CIDCO police station, Aurangabad for the offence punishable under Section 376 of I.P.C. His application with similar prayer bearing bail petition No. 1111 of 2017 came to be rejected by the learned Additional Sessions Judge-9, Aurangabad by order dated 3.7.2017.

2. On the basis of the complaint lodged by victim Kiran, aforesaid crime came to be registered against the present applicant. It has been alleged in the complaint that the applicant has given false promise of marriage to the complainant Kiran and accordingly committed sexual intercourse with her several times during the period from Feb. 2017 to 16.5.2017. It has also been alleged in the complaint that the applicant has thereafter not fulfilled his promise

and refused to marry with her. Thus, the complaint is filed for the offence punishable under Section 376 of I.P.C. It has been alleged that the present applicant has committed intercourse with the complainant against her will during that period. On the basis of these allegations, the applicant apprehends his arrest at the hands of police.

3. Learned counsel for the applicant submits that in the given set of allegations, offence of rape is not at all attracted. As per the allegations made in the complaint, the complainant and present applicant were in love with each other and accordingly sexually involved with each other, by consent. Thus, by non fulfillment of promise of marriage, the act of such sexual intercourse would not be converted into an offence of rape. Learned counsel submits that the applicant otherwise is ready to marry with the complainant, however, her parents were not ready for such marriage, as the applicant is from lower caste. The applicant is ready to abide the conditions, if any, imposed by this court while granting him pre-arrest bail. The antecedents of the applicant are clear. Learned counsel submits that the applicant is not running away from the aforesaid crime. He has fixed place of residence and he has not resigned the job but the said company is about to be closed in the next month and the company has thus directed the employees to find out some other job.

4. Learned A.P.P. submits that there is strong prima facie evidence against the applicant. He had committed sexual intercourse with the complainant by giving false promise of marriage. However, thereafter he has not fulfilled his promise. The application is thus liable to be rejected.

5. On perusal of complaint and the investigation papers, it appears that the complainant was in love with the applicant and accordingly the complainant and present applicant sexually involved with each other. However, as per the allegations made in the complaint, it appears that the applicant has not fulfilled his promise of marriage and accordingly the complainant has lodged the complaint against the applicant for having committed an offence punishable under section 376 of I.P.C. Considering the nature of allegations and since the antecedents of the applicant are clear and he has fixed place of residence, I am inclined to grant pre-arrest bail to the applicant. Hence, I proceed to pass the following order:-

O R D E R

I. Criminal application is hereby allowed.

II. In the event of arrest of the applicant, Manoj Madhukar Desale, in crime No. 0229 of 2017 registered at MIDC CIDCO police Station, Aurangabad, he shall be released on pre-arrest bail, on furnishing personal bond of Rs.15,000/- with one surety of the like amount, on the following conditions:-

- a) The applicant shall not tamper with the prosecution evidence, in any manner.
- b) The applicant shall attend the concerned police station once in a week i.e. on every Sunday between 9.00 a.m. to 11.00 a.m. till filing of charge sheet.

III. Application is accordingly disposed of.

(V. K. JADHAV, J.)

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