

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

ANTICIPATORY BAIL APPLICATION NO. 278 OF 2017

Nitin Vasantha Rao Kamble

...Applicant

Versus

The State of Maharashtra

...Respondent

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Mr. Aniket Nikam i/b. Mr. Chetan S. Damre for the Applicant.

Mr. S. H. Yadav, APP for the State-Respondent.

Mr. Umesh Deshpande for the Complainant.

Ms. V. S. Dhumal, API, Wakad Police Station, Pune (present)

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CORAM: Mrs. MRIDULA BHATKAR, J.

DATED: MARCH 21, 2017

P.C. :

1. This application is filed by the applicant-accused for pre-arrest bail as the applicant-accused apprehend arrest in C.R.No. 764 of 2016 registered with Wakad Police Station, District- Pune for the offences punishable under sections 376, 323 and 504 of the Indian Penal Code.

2. It is the case of the complainant that in December 2014 she got acquainted with the applicant-accused through face-book. She became friendly with the applicant-accused from May 2015. As both hail from Nagpur, they started chatting with each other. The applicant-accused used to come at Nagpur to meet the complainant. They fall in love with each other. The applicant-accused called her at Pune. On persuasion of the applicant-accused, she changed her job and started residing with the

applicant-accused in his flat alongwith other persons at Pune. At his request and promise to marry she against her wishes had consented to sexual intercourse with him. After one month, she left his flat and shifted to other place. She hired one flat and started staying with other roommates. The sexual relationship continued. In September 2015, she realized that the applicant-accused is not ready to marry. The applicant-accused has taken money from the complainant for the purpose of his education and other expenses. Thereafter, the applicant-accused avoided the complainant for marriage. When the complainant asked the applicant-accused about marriage, he started assaulting and pressurized her and compelled to her for sexual relationship with him. Therefore, she gave a complaint to the police on 7th December 2016. Hence, this application.

3. The learned counsel for the applicant-accused has submitted that the complainant and the applicant-accused were in love with each other and were physically involved. There was no force or pressure for the sexual relationship, but it was by mutual consent. The applicant-accused has sustained fracture, and at that time the complainant had stayed with him and was taking his care. The learned counsel for the applicant-accused has relied on the documents, photographs and submitted that at the most there can be offences under sections 504 and

323 and both the offences are bailable and there is no case under section 376 of the Indian Penal Code. He has further submitted that the applicant-accused has also filed three NCs against the complainant. The complainant has threatened the applicant-accused in the month of October and December that she would approach the police and lodge a false complaint against the applicant-accused as he had refused to marry her.

4. The learned APP opposed this application. He has relied on the complaint and so also the statements of the roommates of the complainant. He has submitted that these witnesses have stated that as the complainant has informed them that there was pressure and also the applicant-accused used to assault her and demand sexual intercourse by using force. He has further submitted that after investigation, it is found that apart from this prosecutrix, a statement of a girl who was also subjected to assault by the applicant-accused for sexual intercourse is recorded by the police. There was also another incident of assault for sexual relationship, but that girl refused to come forward and give complaint against the applicant-accused. He has further pointed out the statements of another roommates, who have seen the applicant-accused beating the complainant brutally. He has produced the photographs of the complainant with bruises and marks of injuries, which were

retrieved from the laptop of the applicant-accused. He has also produced the photographs of the girls who were nude and semi nude, which were also retrieved from the laptop of the applicant-accused. The learned APP further submitted that the police want custody of the applicant –accused in order to find out whether the applicant-accused has really cheated any other girl and forced for physical relationship.

5. Perused the F.I.R., statements of the roommates of the complainant and the supplementary statement of prosecutrix. Also perused the NCs, which were filed by the applicant-accused against the prosecutrix. It appears that initially the complainant and the applicant-accused were mentally and physically involved with each other and therefore, the complainant shifted from Nagpur to Pune. Initially, it was consensual sexual intercourse out of love. Under such circumstance, it cannot be said that there was a rape. This Court has taken a specific view in the cases of claiming sexual intercourse under promise to marry. I rely on the ratio laid down in the order dated 9th January 2017 passed by this Court in *Anticipatory Bail Application No. 2221 of 2016 (Akshay Manoj Jaisinghani Vs. The State of Maharashtra)*. However, the present case is distinguishable on facts. I have gone through the statements of the complainant and her roommates. The photographs are retrieved from the laptop of the applicant-accused are also perused.

Prima facie, it appears that though initially it was consensual physical relationship. Subsequently, it is turned in forcible sexual relationship. The complainant later was not ready for sexual relationship but instances are stated wherein the applicant-accused had assaulted her for the same. The statements of the roommates and other witnesses reveal that the prosecutrix was beaten up by the applicant-accused on number of occasions. The prosecutrix has disclosed that under physical force she had consented to the sexual relationship and there was threat of exposing her. The photographs showing the injuries and the marks of the prosecutrix, *prima facie* supports her case. Assuming the submission of the learned counsel for the applicant-accused at this stage that the nude and semi nude photographs which are retrieved from the laptop of the applicant-accused were downloaded from internet, yet, the learned APP submits that the police want to investigate and to find out whether the photographs of any other girl who came in contact with the applicant-accused were taken and stored. Thus, earlier free consent for sex may get polluted and converted into 'no consent' leading unwilling forcible intercourse amounting to rape. However, *prima facie* there should be such supportive material. Therefore, I am of the view that the custody of the applicant-accused is required. Hence, Anticipatory Bail Application is rejected.

(MRIDULA BHATKAR, J.)