

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 471 OF 2017

Mandal Saifulla Shaikh.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Arjun Singh Thakur i/b. Global Juris Consults, advocate for Applicant.

Mr. R.M. Pethe, APP for State.

Mr. Lad, PSI, Byculla Police Station.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : MARCH 17, 2017**

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. 9 of 2017 registered at Byculla Police station initially for an offence punishable under section 376 of the Indian Penal Code.

Subsequently, sections 417 and 420 of the Indian Penal Code have been added.

3 It is the case of the prosecution that on 6/1/2017 Smt. X lodged a report at the police station that she is the original resident of Asansol, West Bengal. Since she belongs to economically backward class, she wanted to work in Mumbai. That in the year 2014, when she was travelling to Mumbai, she met the present applicant in the train. At that juncture itself, the applicant had proposed to her. However, she had turned down the proposal. Thereafter, the applicant had met her on many occasions and had expressed his love for her. He had also proposed to her for marriage in the year 2014. She had agreed to marry him. Taking advantage of the said approval to his proposal, he had sexual intercourse with her on various occasions. That she had kept insisting upon the applicant to get married to her and he used to postpone the date for marriage. The family members of the complainant had doubted the bonafides of the

applicant and therefore, they had requested him to fix a date. Accordingly, the date of marriage was fixed on 6/12/2016.

4 On 4/12/2016 the applicant had informed the complainant that he is not keeping well. He had switched of his cell phone. His whereabouts were not known for quite some time. On 6/12/2016 she had called him on his cell phone and he had informed her that he is in Calcutta. However, she came across him at Jhaveri Bazar, Mumbai. On 7/12/2016 she had met one person, who had claimed to be a journalist. He had assured to help her. He had reconciled between the applicant and the complainant and thereafter, the date of marriage was fixed as 26/12/2016.

5 On 8/12/2016 for the first time, the applicant had disclosed to the complainant that he is married man and a father of four children and that his real name is Shaikh Saifulla Mandal. The complainant was shocked to hear the same. But she was in love with him and the damage was already done. She still agreed to marry him. It is

alleged that on 10/12/2016 she had demanded Rs. 12,000/- to pay her fees of Sai Ladies hostel. According to the complainant, he owes Rs. 4500/-. At that juncture, the applicant had allegedly sent four unknown persons to meet her and threatened her of dire consequences if she follows the applicant.

6 The learned Counsel for the applicant submits that the relationship between the applicant and the complainant was consensual in nature and therefore, the applicant deserves to be enlarged on bail. It is also submitted that the complainant has suppressed material facts about her personal life. The learned APP rightly submits that the said aspect would be immaterial, as the applicant is being prosecuted for offence punishable under sections 417 and 420 of the Indian Penal Code also, as the applicant had not disclosed to the complainant for four years that he was a married man and a father of four children. That he had cheated upon the complainant in as much as she had agreed to have sexual intercourse only because there was promise to marry.

7 In the peculiar facts of the case, no case for pre-arrest bail is made out. Hence, the application under section 438 of the Code of Criminal Procedure, 1973 stands rejected.

8 However, the observations herein above shall not be considered while deciding an application under section 439 of the Code of Criminal Procedure, 1973 or at the time of trial.

9 The application being sans merits stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)