

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

ANTICIPATORY BAIL APPLICATION NO. 667 OF 2017

Ravisudan S.Gupta ... Applicant.

Versus

The State of Maharashtra ... Respondent

....

Mr.Vijendra Kumar Rai for the applicant

Mr.R.M.Pethe, APP for the Statement

Mr.Rahul Bhandare, PSI, Kurar Police Station.

....

CORAM: A.M.BADAR, J.

DATE: 4th October, 2017

PC:-

1. By this application under Section 438 of the Code of Criminal Procedure the applicant/accused in Crime No.90 of 2017 registered with Kurar Police Station, Mumbai on 20.3.2017 on the basis of report lodged by the prosecutrix for the offences punishable under Section 376(2)(n), 354(A),(D), 342, 509, 506 of the Indian Penal Code and Information Technology Act 66(D) is seeking pre-arrest bail.

2. Heard the learned advocate appearing for the applicant/accused. He submitted that in pursuant to the order dated 19th April 2017 passed by this Court he has duly attended the investigating officer and had handed over his cell phone as well as sim card to the investigator. The investigator has seized those articles.

3. In this view of the order according to the learned Advocate for the applicant, custodial interrogation of the applicant is not warranted.

4. The learned APP opposed the application by contending that the offence is serious. He however, has not disputed the fact that the cell phone as well as sim card of the applicant came to be seized after the applicant had handed over the sim to the investigator. It is not disputed that the applicant had attended the investigators in pursuant to the order dated 19th April 2017 passed by this Court.

5. It is seen from the record that on 19th April 2017 ad-interim pre-arrest bail came to be granted by this Court. (Coram:A.S.Gadkari,J) by observing that physical relationship of the first informant with the present applicant was an consensual act between two adult persons. The said order is continued from time to time and is still in operation. On this backdrop,if First Information Report lodged by the prosecutrix is perused, then it is seen that she became acquainted with the applicant/accused on 23.05.2016. She herself had visited the house of the applicant in September 2016 when according to her version, the applicant had committed forcible sexual intercourse with her. She did not lodge report of this incident nor informed the incident to any of her family members. She is an adult married woman who has stated her age as 31 years. The First Information Report reveals that the first informant had been to Surat and from Surat from cell phone allegedly given by the present applicant she used to talk with the applicant. The learned advocate for the applicant disputing this fact as placed on record chart at Exhibit F

showing that it was the first informant who herself has called the applicant from various cell numbers from Surat and had talked with him on several occasions. The First Information Report reveals that sexual relations between the applicant and the first informant continued from time to time and ultimately as the first informant became depressed mentally, she lodged the report against the present applicant after consulting with her husband. In addition, the first informant has reported that the applicant had video graphed sexual activities of the couple and he was threatening to make it public.

6. The averments in the First Information Report shows that relationship between the first informant and the applicant were consensual in nature. The places where said incident took place are stated to be residential house of the applicant. The first informant herself used to visit his house as seen from the averments made in the first information report. So far as

alleged video recording is concerned, cell phone and sim card of the applicant is already seized by the investigator.

7. In this view of the matter, I am of the considered opinion that custodial interrogation of the present applicant in the crime in question is not warranted. In this context reliance can be placed in the matter of **Sumit Vs. The State of Maharashtra in Anticipatory Bail Application No.1618 of 2015, decided on dated 10th March, 2016** (Coram: Mrs. Mridula Bhatkar, J) as well as in the matter of **Mahesh Balkrishna Dandane Vs. The State of Maharashtra reported in 2015 ALL MR(Cri)2805**. On identical facts, this Court has released the accused in those cases on pre-arrest bail application. Therefore, the following order.

ORDER.

- (i) The application is allowed.
- (ii) The order dated 19th April 2017 is confirmed on same terms and conditions.

(iii) In addition, the applicant should attend the investigator as and when called for the purpose of investigation till filing of the chargesheet.

(iv) As condition of this order the applicant shall not contact to prosecutrix or her relatives in any manner.

He shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court or to the Police Officer.

(v) The applicant/accused shall not leave India without the prior permission of the Court.

(A.M. BADAR, J)