

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

ANTICIPATORY BAIL APPLICATION NO. 1149 OF 2017

Brisnt Yeshudas Rajan	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

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Mr.Ashish Baraskar, Advocate for the Applicant.
Mr.A.R. Kapadnis, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 5, 2017.

P.C. :

This is an application for anticipatory bail. The offence is registered with Devnar Police Station vide C.R.No.137 of 2017 for the offences punishable under Sections 376 and 420 of the IPC.

2 The prosecution case is that on 19th June, 2017, FIR was lodged by the victim alleging that there was a relationship between the victim and the applicant for a period of five years. He promised that he would marry the victim and had physical relationship on several occasion. It is also alleged that he had demanded Rs.1,50,000/- from the complainant which was provided by her. It is further alleged that the victim had paid an

amount of Rs.90,000/- to the applicant. The applicant assured the complainant that her amount would be returned, but, he did not do so. On account of the quarrel between the applicant and the victim she consumed phenyl on 23rd December, 2016. The incident was reported to the police. It is alleged that the applicant resolved the dispute with her and promised her that he would marry her. In view of that the victim did not peruse her complaint. Subsequently, the victim came to know that the applicant was married to another girl on 8th December, 2016. The victim inquired with the applicant about the said marriage and at that time the applicant admitted that he is married and assured her that he would take divorce from his wife and would marry the victim. In January 2017, it was noticed that the victim was pregnant. Since the applicant had assured her that he would marry her, she continued with the pregnancy. However, since the applicant did not fulfill his promise, FIR was lodged.

3 Learned advocate for the applicant submits that the relationship between both the parties was consensual and the offence under Section 376 is not made out. He submitted that the allegations made in the FIR are false. He submitted that he was pressurised at the police station and was forced to agree that he would marry the victim. He relied upon the decision of the

Supreme Court in the case of ***Uday Vs. State of Karnataka***¹.

4 He submitted that there was no promise of marriage and both of them were in relationship. By consent they had entered into physical relationship. He, therefore, prayed that anticipatory bail may be granted.

5 Learned APP opposed the application for bail. He submitted that although it was a consensual relationship, the conduct of the applicant has to be considered. He had promised the victim that he would marry her. He also submitted that at the earlier point of time when the victim had consumed phenyl and attempted suicide. The victim did not pursue action as the applicant had promised her of marriage. The said fact is reflected in the FIR. He further submitted that the victim was pregnant, but, she continued with the pregnancy on account of promise made by the applicant.

6 Perused the documents on record and the FIR. Although, from the tenor of the FIR, it appears that there was an affair between the victim and the applicant, it is alleged that on the promise of marriage, both had entered into physical relationship. On account of the non fulfillment of the promise, the

1 2003(4) SCC 46

victim had attempted suicide. The applicant had assured her that he would marry her. The victim was pregnant and she continued with the pregnancy on the basis of the promises made by the applicant. The decision relied upon by the applicant's advocate was delivered in the Appeal against conviction after appreciation of evidence. The Court observed that there was serious doubt that promise to marry induced the victim to consent to having sexual intercourse with accused and that the victim was aware that marriage with accused is difficult. In the present case the defences raised by the applicant in the application can be agitated at the time of trial. The applicant continued his relationship with the victim resulting into pregnancy, which was continued by her and at present she is eight months pregnant. Looking into the conduct of the applicant, power under Section 438 cannot be exercised.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Anticipatory Bail Application Nos.1149 of 2017
is rejected.

(PRAKASH D. NAIK, J.)