

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1531 OF 2017

Anil Tulsiram Fulsawange .. Applicant.

Versus

The State of Maharashtra .. Respondent

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Mr.Gautam T.Kanchanpurkar for the applicant

Ms.P.P.Shinde, APP for the State.

PSI Deshmukh S.S., Chunabhatti, Police Station, Mumbai.

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CORAM: A.M.BADAR, J.

DATE : 4th October, 2017

PC:-

1. The applicant/accused in crime No.139 of 2017 for the offences punishable under Section 376, 354(A), 506 of the Indian Penal Code as well as under section 66(C) and 67 of the Information and Technology Act, 2000 by this application is seeking pre-arrest bail.

2. Heard the learned advocate appearing for the applicant/accused. By taking me through the First Information Report and other documents annexed to the application, the learned advocate argued that the first informant was 30 years old at the time of lodging the First Information Report. The present applicant is younger in age to her. The learned Advocate further argued that the applicant has passed B-Tech education in Information Technology and he is making preparation for getting himself selected through MPSC and is aspiring to join public services. The learned advocate further argued that the First Information Report itself reflects that the incident of sexual intercourse between the applicant and the first informant was consensus and there was no element of force. The learned advocate further submitted that cell phones of the applicant is already handed over to the investigating officer. He argued that the applicant had presented the cell phone to the first informant and then the first informant had sent her nude photographs to the applicant. The learned

advocate for the applicant submitted that this fact be verified from the investigator.

3. I heard the learned APP appearing for the State. She submitted that the investigator has collected relevant pages of Geetanjali lodge at Panvel and he has seized cell phone of the applicant as well as that of the first informant. Those cell phone are sent for forensic examination and the report thereof is awaited.

4. I have considered the rival submissions and also perused the material placed on record including First Information Report and other documents. The averments made in the First Information Report reflects that the applicant and the first informant were deeply in love with each other. They indulged in sexual intercourse on several occasions. The First Information Report itself contains a statement that as the applicant has refused to marry the first informant, the first informant has approached police. It is averred in the First

Information Report that the couple had been to Geetanjali lodge of Panvel in September 2016 when sexual relations between them started. Apart from these allegations, the First Information Report contains the averment that cell phone of the applicant contains nude pictures of the first informant and his threatening to publish those pictures by uploading them on internet.

5. This Court vide order dated 31st August 2017 (Coram: Revati Mohite Dere, J) has protected liberty of the applicant by granting ad-interim pre-arrest bail to him with condition that he should report the investigator and he should also hand over his cell phone to the investigators.

6. It is not disputed that in pursuant to the order 31st August, 2017 the applicant has reported the investigator. As stated by the learned APP, cell phones of the present applicant has already been seized by the investigator.

7. The applicant in the First Information Report has not reported commission of an act which is termed as rape defined in Section 375 of the Indian Penal Code. The relations between the applicant and the first informant were consensus and those were going on and parties had indulged in such relations over a period of one year. It appears that the relationship turned sour as the applicant refused to marry the first informant which has resulted in lodging the First Information Report. The prosecutrix is an adult lady who according to the applicant is elder than the applicant. The prosecutrix herself has stated her age as 30 years in the First Information Report. She had attained an consenting age and prima facie it appears that she was well aware as to what was good and what was bad for her. She indulged in sexual relations with the applicant and continued it for a pretty long period. As cell phone of the applicant is already seized by the investigator nothing is to be recovered from the applicant. The applicant is well qualified young person aspiring for public service.

8. In the backdrop of these facts, I am of the considered opinion that custodial interrogation of the present applicant is not warranted. The learned advocate for the applicant rightly placed reliance on orders **dated 10th March, 2016 passed by this Court (Coram:Mrs.Mridula Bhatkar, J) in Anticipatory Bail Application No.1618 of 2015, Sumit Vs. The State of Maharashtra** 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 order.

ORDER

- (i) In the event of his arrest in crime No.139 of 2017 for offence punishable under Section 376, 354(A), 506 of the Indian Penal Code as well as under section 66(C) and 67 of the Information and Technology Act, 2000 registered with Chunabhatti Police Station, Mumbai the applicant be released on bail on furnishing PR bond of

Rs.15,000/- and on furnishing surety in the like amount.

- (ii) As condition of this order the applicant shall not contact prosecutrix 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.
- (iii) The applicant/accused shall make himself available for interrogation as and when required by the investigating officer.
- (iv) The applicant/accused shall not leave India without the prior permission of the Court.

(A.M. BADAR, J)