

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1742 OF 2016

Vaibhav Madhukar Kesarkar.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

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

Mr. Arfan Sait, APP for State.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : FEBRUARY 7, 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. 690 of 2016 registered at Dindoshi Police Station on

29/8/2016 for offence punishable under section 376, 420, 506 of the Indian Penal Code.

3 It is the case of the prosecution that on 29/8/2016 the complainant lodged a report at the police station alleging therein that she is working in Westin hotel in the marketing department since 2014. The applicant was at that relevant time working in the same hotel. They had exchanged their cell phone numbers. They got acquainted with each other. The acquaintance transformed into love. She had accepted the proposal of the applicant. It is alleged that the applicant and the complainant used to go for long drive. One fine day, he had taken her to hotel Sui Palace. According to the complainant, the applicant had informed her that he was getting married to her and therefore, there is no harm in having sexual intercourse. It is alleged that thereafter, they continued to have sexual intercourse at regular intervals. It is alleged that after some days, the applicant was not receiving phone calls made by the

complainant. On 29/8/2016 she met the applicant near Westin Hotel where he had informed her that he does not wish to get married to her. The complainant had insisted upon him to get married with her and she told him that she would not return home unless and until he would marry her and would stay with him. At that juncture, the applicant had taken the complainant in Amar lodge. There also they had sexual intercourse. According to the complainant, the applicant has refused to get married to her and therefore, according to the complainant, he had committed offence under section 376 of the Indian Penal Code.

4 The learned Counsel for the applicant has placed on record 'whatsapp' messages exchanged between the applicant and the complainant. It appears that on 30/7/2016, the complainant had sent message to the applicant stating therein that she has searched a guy for herself and that she is in love with him. There were differences between the applicant and the complainant.

5 FIR is lodged on 29/8/2016. The learned Counsel for the applicant rightly submits that the complainant and the applicant had consensual sex for long time. There were differences of opinion and that in July, 2016 itself, it was the complainant who had informed him that she has found someone else. It is in these circumstances, interim relief granted in favour of the applicant deserves to be confirmed on the same terms and conditions.

6 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 438 of the Code of Criminal Procedure, 1973 and shall not be considered at the time of trial. amount.

7 Hence the following order is passed.

ORDER

(I) The application is allowed.

(ii) In the event of arrest in Crime No. 690 of 2016 registered at Dindoshi Police Station, Mumbai, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or two solvent local sureties in the like amount.

(iii) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

(iv) The applicant shall attend concerned police station as and when called by the investigating officer and cooperate with the investigating agency to the best of his capacity.

8 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)