

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1713 OF 2017

Yogiraj Ramchandra Wagh ...Applicant.

Versus

The State of Maharashtra ...Respondent.

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Mr.Pravin H.Padave for the applicant

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

Mr.V.N.Satpute, PSI, Shvaji Nagar Police Station, Ambernath.

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CORAM: A.M.BADAR, J.

DATE: 5th October, 2017

PC:-

1. The applicant/accused in Crime No.I-245 of 2017 for the offence punishable under Section 376(N), 506(2) of the Indian Penal Code registered with police Station Shivaji Nagar, Ambernath(E) Dist. Thane by this application is seeking pre-arrest bail.

2. Heard the learned advocate appearing for the applicant/accused. He argued that the First Information Report reflects that there was consensual sex between two adult persons and therefore custodial interrogation of the applicant is not warranted.

3. The learned APP opposed the application by contending that the crime in question is serious and allegations are to the effect that a married woman is raped by the applicant by taking advantage of the fact that her husband is friend of the applicant. The learned APP therefore submits that the applicant is not entitled for pre-arrest bail.

4. I have carefully considered submissions so advanced and also perused the case diary made available by the learned APP. The alleged victim of the crime in question is an adult married woman, who is stating her age as 33 years. She is well acquainted with the present applicant/accused, who is a police constable. Husband of the victim/first informant is also

an police constable. The First Information Report itself reveals that whenever husband of the first informant was not in house and when cell phone of the husband of the first informant used to be unreachable, the applicant used to call the first informant and used to have talk with her. The first informant claims that because of this telephonic talks she became acquainted with the present applicant.

5. The incident in question allegedly took place in the month of January 2017. The first informant alleged that when her husband was on duty and her both children were watching TV, the applicant/accused came to her house at about 3.00 p.m., took her to her bed room despite her resistance and then committed rape on her. She further stated that then he threatened her by a small knife. Further part of the First Information Report shows that, whenever husband of the first informant used to be away from home for attending his duty, the first informant used to call the present applicant. Surprisingly enough, she further added that then

she used to call her husband to ascertain whether her husband is actually present at the work place. Thereafter the present applicant used to visit the house of the first informant. Then the couple used to have sex. This according to the first informant was going on because of threatening of the applicant/accused. This factual aspect will have to be weighed at the time of the trial. Suffice to mention that the first informant herself used to call the applicant telephonically after ascertaining, whether her husband is actually present at the work place and then there used to be act of sexual intercourse between the applicant and the first informant. Prima facie, this consensual sex between two adult persons is not falling under any of the clause enumerated in Section 375 of the Indian Penal Code.

6. Statement of the son of the first informant shows that in absence of his father, one person used to visit his house sometimes in the morning, sometimes in the afternoon and sometimes at night. Son of the first informant further stated

that the said person used to go in the bed room and then his mother also used to go to the bed room. Prima facie, this also indicates that the first informant was consenting party to whatever was happening between her and the applicant/accused.

7. In this view of the matter, considering the nature of the evidence available against the present applicant custodial interrogation of the applicant/accused is not warranted. Even otherwise, there is nothing to be recovered from him. Therefore, the following order.

ORDER

- (i) In the event of his arrest in Crime No. No.I-245 of 2017 for the offences punishable under Sections 376(N), 506(2) of the Indian Penal Code registered with police Station, Shivajinagar, Ambernath (E) Dist.Thane, the applicant accused be released on bail on executing P.R. Bond of Rs.15,000/- and furnishing one surety in the like amount.

- (ii) As a condition of this order the applicant should not contact either the prosecutrix or her husband as well as her family members and relatives in any manner.
- (iii) The applicant 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.
- (iv) The applicant/accused shall make himself available for interrogation as and when required by the investigating officer.

(A.M. BADAR, J)