

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1759 OF 2017

VISHNUKUMAR RAJITRAM YADAV)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Ashok Kumar Yadav, Advocate for the Applicant.

Mr.S.S.Hulke, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 6th OCTOBER 2017

P.C. :

1 By this application under Section 438 of the Code of Criminal Procedure, the applicant / accused in Crime No.258 of 2017 registered with Shahu Nagar Police Station, Mumbai, for offences punishable under Sections 420 and 376(2)(l) and 504 of the Indian Penal Code (IPC), is seeking pre-arrest bail.

2 Heard, with consent of the parties, as the learned APP is equipped with the case diary of the crime and the Investigating Officer is also present.

3 Heard the learned advocate appearing for the applicant / accused. He argued that the First Information Report (FIR) itself reflected that the relationship between the parties was consensual. There was no attempt to cheat and commission of forcible intercourse against the will and consent of the prosecutrix.

4 The learned APP argued that the FIR itself shows that the applicant / accused had represented the prosecutrix that he is an unmarried person and therefore induced her to have sexual relations with her. With this, the learned APP further argued that Investigating Officer has recorded statement of the Monk who denied to have solemnised marriage of the applicant / accused with that of the prosecutrix.

5 I have carefully considered the rival submissions and also perused the FIR as well as papers of investigation.

6 The prosecutrix is an adult lady. She is aged 34 years as stated by her in the FIR lodged on 23rd September 2017. She claims to have developed friendly relations with the applicant / accused after accepting his friend request from the social media site. As per version of the prosecutrix, in December 2016, the applicant / accused came to Mumbai and then they started roaming at various places. The applicant / accused had informed her that he is unmarried. Then, according the First Informant / prosecutrix, on 13th December 2016, she joined the company of the applicant / accused at about 10 p.m. in the night and went for motorcycle ride. On the way, they halted at Khopoli and then the applicant / accused had committed sexual intercourse with her, which according to her, was against her will. The First Informant further stated that then such incidents were frequent and the couple used to go to Khopoli and used to stay at a lodge. At that point of time, the prosecutrix came to know that the applicant / accused is a married person. The FIR itself shows that in December 2016 itself the prosecutrix came to know this fact. However, the prosecutrix did not lodge any report against the

present applicant / accused. Rather, she continued her relationship with the applicant / accused even thereafter. As per her version, on 1st May 2017, she married the applicant / accused at the house of a Monk at Ramabai Nagar, Ghatkopar (East). She disclosed this fact to her relatives also. It is, thus, prima facie seen that, even after the prosecutrix was knowing the fact that the applicant / accused is a married person, she continued her liaison with him. She married with him subsequently as claimed by her. It appears that then, subsequently, there was quarrel between the parties, as relatives of the prosecutrix were insisting her to join company of the applicant / accused and were insisting the applicant / accused to take her to matrimonial house. The First Informant / prosecutrix then attempted to commit suicide, as seen from her FIR. Subsequently, the FIR came to be lodged.

7 The prosecutrix is a well educated lady working as an Accountant in a College at Mumbai. She continued her relations with the applicant / accused even after knowing the fact that the applicant / accused is a married person. She, subsequently,

married the applicant / accused. Sexual intercourse by a man with a woman amounts to rape if it falls under any of the category enumerated in Section 375 of the IPC. Sexual intercourse against the will and without consent of a woman amounts to rape. Prima facie, in this case, it appears that the prosecutrix was desirous of having sexual relation, and what was going on, was with her consent. She had attained consenting age. It appears that she was knowing what was good and what was bad for her.

8 In this view of the matter, considering the nature of evidence against the applicant / accused as well as nature of accusation against him, I am of the opinion that custodial interrogation of the applicant / accused is not warranted. Even otherwise, Section 420 of the IPC requires intention of cheating since inception. The promise so made is shown to have been made without intention to honour the same. In the case in hand, the prosecutrix alleged that she was knowing the fact that the applicant / accused is a married person and still she claims to have married him. On this factual backdrop, the applicability of

Section 417 or Section 420 of the IPC will have to be seen.

Therefore the order :

ORDER

- i) The application is allowed.
- ii) In the event of his arrest in Crime No.258 of 2017 registered with Shahu Nagar Police Station, Mumbai, for offences punishable under Sections 420 and 376(2)(l) and 504 of the IPC, the applicant / accused shall be released on bail on his executing P.R.Bond in the sum of Rs.15,000/-, and on furnishing surety in like amount.
- iii) As a condition of this order, the applicant / accused should not contact the prosecutrix or her relatives in any manner.
- iv) The applicant / accused 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 should not commit any offence in future till conclusion of his trial.

(A. M. BADAR, J.)