

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1898 OF 2017

SAMEER GULAMNABI SUTAR)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Kabul Labana, Advocate for the Applicant.

Ms.Veera Shinde, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 2nd NOVEMBER 2017

P.C. :

1 The applicant / accused in Crime No.141 of 2017 registered with Police Station Kongaon, Thane, for offences punishable under Sections 376, 328 and 417 of the Indian Penal Code (IPC), is seeking pre-arrest bail.

2 Heard the learned advocate appearing for the applicant / accused. By pointing out the First Information Report (FIR) lodged by the prosecutrix, the learned advocate argued that

the prosecutrix has attained majority and relations between the prosecutrix and the applicant / accused prima facie demonstrate that because of love affair, they indulged in sexual relations. The learned advocate further argued that even the FIR demonstrates that whatever happened in April 2017 was out of free consent of the prosecutrix.

3 The learned APP opposed the application by contending that the present applicant / accused is a married person and the act committed by him on the prosecutrix is amounting to rape.

4 I have carefully considered the rival submissions and also perused the entire case diary. According to the prosecution case, as reflected from the FIR lodged by the prosecutrix, who happens to be an adult lady of 23 years of age, she came in contact with the present applicant / accused through a person named Lucky. They developed friendship and then that friendship turned into love relation between them. The

prosecutrix alleged that the applicant / accused was alluring her with a promise of providing better employment. The prosecutrix further stated that a week prior to Ramzan Id falling in April 2017, the applicant / accused called her for having a ride. She was then taken by a car to Jai Malhar Hotel, where she was given a cold drink by the present applicant / accused. She felt giddiness and then the applicant / accused took her to a lodge where she became unconscious. When she regained consciousness, the applicant / accused accepted the fact that he had committed a mistake and assured that he will not repeat the mistake and will marry with her. Subsequently, the prosecutrix conceived, but the applicant / accused refused to marry her.

5 Record of investigation shows that the applicant / accused is a married person having a wife named Tayara. He is having two children out of that wedlock. Even if it is assumed that the prosecutrix has added embellishments to her version, prima facie, it is seen from the papers of investigation that consent of the prosecutrix, if any, is procured by misconception of fact, and

as such, at this stage, it cannot be said that the prosecutrix was a consenting party to the sexual intercourse with the applicant / accused, who is a married person.

6 In this view of the matter, no case for pre-arrest bail is made out, and therefore the order :

ORDER

The application is rejected.

(A. M. BADAR, J.)