

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**ANTICIPATORY BAIL APPLICATION NO.1905 OF 2017**

**SUDHIR A. NAIR** )...APPLICANT

**V/s.**

**THE STATE OF MAHARASHTRA** )...RESPONDENT

Mr.Ashok M. Bhatia, Advocate for the Applicant.

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

Mr.S.R.Lokhande, Assistant Police Inspector, Aarey Police Station,  
Mumbai, present in court.

**CORAM : A. M. BADAR, J.**

**DATE : 2<sup>nd</sup> NOVEMBER 2017**

**P.C. :**

1           The applicant / accused in Crime No.48 of 2017  
registered with Police Station Aarey, Mumbai, at the instance of  
the prosecutrix for offences punishable under Sections 376 and  
506 of the Indian Penal Code (IPC), is seeking pre-arrest bail.

2            Heard the learned advocate appearing for the applicant / accused. He drew my attention to the First Information Report (FIR) in question as well as the earlier FIR lodged by the prosecutrix in order to demonstrate that false allegations are leveled against the applicant / accused. The learned advocate further argued that though he was daily attending the Police Station Aarey, false report of non-cognizable cases are alleged against him, in order to harass him.

3            The learned APP opposed the application by contending that the applicant / accused is indulging in tampering prosecution evidence while enjoying liberty under judicial orders by threatening the prosecutrix and therefore, he is not entitled for anticipatory bail. The learned APP also drew my attention to the FIR lodged by the prosecutrix in order to demonstrate that it is reflecting the offence punishable under Section 376 of the IPC.

4            I have carefully considered the rival submissions and also perused the entire case diary.

5           The first offence registered against the present applicant / accused, at the instance of the prosecutrix, is Crime No.42 of 2017, for the offence punishable under Section 509 of the IPC, in pursuant to her report dated 6<sup>th</sup> April 2017. The prosecutrix is an adult female, aged about 40 years, who on earlier occasion, had married twice. It is seen that her second husband has deserted her.

6           In her first FIR dated 6<sup>th</sup> April 2017, the prosecutrix alleged that on 31<sup>st</sup> March 2017, by making telephonic call to her, the applicant / accused used obscene language in order to insult her modesty. Though she averred in the said FIR that she is having love affair with the present applicant / accused and it was culminated into physical relations between them, the prosecutrix has not averred commission of rape by the present applicant / accused on her, in this FIR lodged on 6<sup>th</sup> April 2017.

7           The subject FIR came to be lodged by the prosecutrix on 16<sup>th</sup> April 2017 which has resulted in registration of subject Crime No.48 of 2017. The prosecutrix alleged in this FIR dated 16<sup>th</sup> April 2017 that her landlord was threatening to evict her and therefore, she approached a labour union named “Dhadak Kamgar Union” on 28<sup>th</sup> January 2016. In the office of that labour union, she came in contact with the present applicant / accused and then she became member of that union. The prosecutrix further averred that in the night intervening 29<sup>th</sup> January 2016 and 30<sup>th</sup> January 2016, at about 1.30 a.m., the present applicant / accused telephonically contacted her and she accepted his call and asked him to come to her house. According to the prosecution, then they indulged in sexual intercourse. The FIR lodged by this adult lady, who is aged about 40 years, goes to show that within few hours of meeting the applicant / accused, she indulged in physical relation with him. The FIR further goes to show that, subsequently, the relations continued, but ultimately when the present applicant / accused refused to marry her and intended to marry some another woman, she lodged the report.

8           It is also seen that even prior to and subsequent to lodging the subject FIR, the prosecutrix had lodged several reports of non-cognizable cases against the present applicant / accused. Those appear to be prima facie arising out of sour love relations between the parties and cannot be construed as an effort on the part of the present applicant / accused to tamper with the prosecution evidence, particularly when the learned Sessions Judge by an order dated 5<sup>th</sup> May 2017 had directed the applicant / accused to attend the concerned police station daily between 6.00 p.m. and 8.00 p.m.

9           Considering the entire fact situation, I am of the considered opinion that the liberty which is cherished fundamental right of the citizen cannot be denied to the present applicant / accused looking into nature of allegations against him, and therefore, the order :

**ORDER**

i) The application is allowed.

- ii) In the event of arrest in Crime No.48 of 2017 registered with Police Station Aarey, Mumbai, for offences punishable under Sections 376 and 506 of the IPC, the applicant / accused shall be released on bail on his executing PR.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 attend the concerned Police station, as and when directed by writing notice by the Investigating Officer.
- 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 contact the prosecutrix in any manner.
- vi) The application is disposed of.

**(A. M. BADAR, J.)**