

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2081 of 2017

Ganesh Anna Barve ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Mohd. S.A.Moghul, Advocate for the Applicant.

Ms.P. P. Shinde, APP for the Respondent/State.

Mr.Ramesh N. Sawant, PSI, Malwani Police Station, is present in person.

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CORAM : A.M.BADAR J.

DATED : 28th NOVEMBER 2017.

P.C. :

1 The applicant/accused in Crime No.654 of 2017 for the offences punishable under Sections 376 and 417 of the Indian Penal Code registered with Police Station, Malwani, Mumbai, by this application, is seeking pre-arrest bail.

2 Heard by consent.

3 Heard the learned Advocate appearing for the applicant/accused. By placing reliance on the Order dated 9th January 2017 passed by this Court in Anticipatory Bail Application

No.2221 of 2016 in the matter of Akshay Manoj Jaisinghani v. State of Maharashtra (Coram : Mrs.Mridula Bhatkar J.), the learned Advocate argued that when a woman is major and educated, she is supposed to be fully aware of consequences of having sexual intercourse with a man before marriage and in the event of consent obtained by fraud, inducement is necessary ingredient. The learned Advocate further argued that it needs to be pointed out that the girl was induced by the accused to such an extent that she was ready to have sexual intercourse with him. According to the learned Advocate for the applicant, in the case in hand, the relationship was consensual and the applicant as well as the First Informant were in love. He, therefore, claimed pre-arrest bail.

4 The learned Additional Public Prosecutor opposed the application by contending that the crime in question is serious and the applicant is not entitled for bail.

5 I have carefully considered the rival submissions and also perused the FIR as well as the case diary of the crime in question.

6 The FIR came to be lodged against the present applicant on 24/10/2017 by the prosecutrix has stated her age as 20 years. The FIR shows that the prosecutrix as well as the

present applicant were taking education in the same college. This resulted in love relations between them. As stated by the prosecutrix, in March 2017, the applicant had taken her to a lodge at Aksa beach and there by promising to marry her, he committed sexual intercourse with her. The prosecutrix further stated that from March 2017 to June 2017, the applicant had committed sexual intercourse with her at the very same lodge on several occasions. However, ultimately, from her friend, the prosecutrix came to know that the applicant is marrying some another woman. It is thus clear that, according to the prosecution case, as reflected from the FIR lodged by the prosecutrix, consent of the prosecutrix was obtained by misrepresenting her with a promise of marriage. Thus, according to the prosecutrix, as the consent was because of misrepresentation, it is not a valid consent according to the law.

7 It is seen from the FIR that the prosecutrix is a fully grown adult lady. She was having love relations with the present applicant which has ultimately culminated into physical relations between them. The charge for the offence punishable under Section 417 rests on a representation which is false. However, it is required to be shown that such representation was false to the knowledge of the accused at the inception itself. In the same manner, the consent is an act of reason mind weighing as a balance what is good and what is bad for one side. The applicant

has produced on record the printouts of Whatsapp conversation between the prosecutrix and the present applicant as well as their photographs. *Prima facie*, it is seen that the alleged act was consensual act.

8 In the wake of foregoing discussion, I am of the considered opinion that the custodial interrogation of the present applicant is not warranted and, therefore, the Order :

- (i) The application is allowed.
- (ii) The applicant/accused in Crime No.654 of 2017 for the offences punishable under Sections 376 and 417 of the Indian Penal Code registered with Police Station, Malwani, Mumbai, in event of his arrest by Malwani Police, is directed to be released on bail on his executing P.R. Bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.
- (iii) As a condition of this Order, the Applicant/accused shall attend the concerned Police Station on every Saturday in between 11.00 a.m. to 1.00 p.m. till filing of the charge sheet and to cooperate the Investigator.
- (iv) As a condition of this Order, thereafter, the applicant should also attend the concerned Police Station as and when required.

- (v) 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.
- (vi) As a condition of this Order, the applicant should not contact the prosecutrix in any manner.

(A.M.BADAR J.)