

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 124 OF 2018**

Shakil Shakur Bijapure	...Applicant
Versus	
The State of Maharashtra	...Respondent

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Mr. Ashok P. Mundargi, senior Advocate with Mr. Satyam H. Nimbalkar for the Applicant.

Mr. S.R. Agarkar, APP for the Respondent-State.

Mr. S.G. Chavan, A.P.I., Alankar Police Station, present.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED: 8th OCTOBER, 2018.**

P.C.:-

This is an application under Section 438 of the Cr.P.C. filed by the aforesaid Applicant apprehending his arrest in C.R. No.210 of 2017 registered with Alankar Police Station, District-Pune, for offences punishable under Sections 313, 324, 328, 376, 377, 504 and 506(2) of the Indian Penal Code, 1860.

2. Heard Mr. Ashok P. Mundargi, the learned senior counsel for the Applicant and Mr. S.R. Agarkar, the learned APP for the Respondent-State. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR

lodged by the prosecutrix. The FIR prima facie reveals that the prosecutrix is a 34 year old lady. It appears that she was employed in the Gym owned by the Applicant herein, who was known to her. The FIR prima facie reveals that the Applicant and the prosecutrix were having physical relationship since the year 2011. She had alleged that the Applicant had given her a cold drink laced with some intoxicant/seductive and subsequently committed rape on her. The first informant claims that the Applicant forced her to have physical relations under a threat of showing her obscene video to others.

4. It is to be noted that the first informant had earlier lodged a similar FIR against the Applicant in the year 2015. In the said FIR the prosecutrix had not stated that the Applicant had committed rape by giving her cold drink laced with intoxicant/seductive or that he had recorded her obscene video and/or threatened to show the said video clip to others. The records reveal that subsequent to filing the complaint, the prosecutrix had given a statement before the P.I. at Pune stating that she was in love with the Applicant and that she had filed the said complaint dated 28.12.2015 as the Applicant had refused to marry her. In view of the said statement, no crime was registered against the Applicant.

5. The records further reveal that prosecutrix filed another FIR being C.R. No.447 of 2017 dated 29.11.2017 in respect of the same incident against the Applicant making similar allegations. The Applicant had been arrested in the said case and was released on bail. Even in the said FIR the Applicant had not made any allegations about the alleged incident of 2011 wherein the Applicant had allegedly raped her after giving cold drink laced with intoxicant/seductive or having filmed her obscene video.

6. It is to be noted that the subject FIR No.210 of 2017 was lodged while the Applicant was in custody in FIR No.447 of 2017. The present FIR is also in respect of the same incident. Prima facie, this is nothing short of abuse of process. Be that as it may, the material on record particularly the statement dated 28.12.2015 prima facie indicates that the prosecutrix was living with the Applicant since 2011 and that the relationship between the Applicant and the prosecutrix was consensual. The prosecutrix had lodged the FIR only because the Applicant has refused to marry her. In my considered view consensual relationship between two adults cannot prima facie constitute offence under Section 375 of the IPC. The Applicant is a permanent resident of Pune and hence there are no chances of the Applicant fleeing from

justice. Apart from the crime registered pursuant to the FIR lodged by the first informant, the Applicant is not involved in any other crime.

7. Under the above facts and circumstances, in my considered view the Applicant is entitled for pre-arrest bail. Hence, the application is allowed on following terms:-

- (i) In the event of arrest of the Applicant in C.R. No.210 of 2017 registered with Alankar Police Station, District-Pune, the Applicant shall be released on bail on furnishing bail bonds of Rs.25,000/- with one or two solvent sureties in the like amount.
- (ii) The Applicant shall report to the Investigation Officer for a period of four days from **15.10.2018** between 11.00 a.m. to 2.00 p.m and thereafter as and when required and called by the Investigation Officer.
- (iii) The Applicant shall furnish his permanent as well as temporary address, if any, and his contact details to the concerned Investigation Officer.
- (iv) The Applicant shall not change his residential address without prior intimation to the concerned Investigation Officer.

(SMT. ANUJA PRABHUDESSAI, J.)