

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**ANTICIPATORY BAIL APPLICATION NO. 2309 OF 2018**

Mohd. Yasin Nazim Choudhary

.. Applicant

*Versus*

State of Maharashtra

.. Respondent

Mr. Yusuf Khan for the Applicant.

Ms. A.A. Takalkar, APP for the State.

Mr. S.B. Bansode, API, Deonar Police Station.

**CORAM : PRAKASH D. NAIK, J.**

**DATE : 02 NOVEMBER 2018.**

**P.C:-**

. This is an application for Anticipatory Bail in connection with C.R. No. 314/2018 registered with Deonar Police Station for offence under Sections 376, 420 of IPC.

2. The prosecution case is that the complainant who is a girl aged about 25 years got acquainted with the applicant-accused. They started chatting on Facebook. They also contacted regularly on mobile phone. They developed friendship. The applicant-accused used to drop her at her residence. Their relationship were known to her family members. The accused had promised that he would marry her in March, 2017. They went out to a resort at Thane. The accused had booked a

room under the promise of marriage, there was physical relationship between both of them. Whenever the complainant gets holiday she used to accompany the accused at the resort and under the promise of marriage the accused used to have sexual relationship with her. Subsequently, it was revealed that the marriage of the accused was fixed up with somebody else. Thereafter, the FIR was registered, the applicant preferred an application for Anticipatory Bail before the Sessions Court which has been rejected on 30<sup>th</sup> October, 2018.

3. On perusal of the First Information Report, it is apparent that the accused and the complainant were in relationship. They had physical relationship, on several occasions both of them had visited the resort. On multiple occasions where they had sexual relationship. The Whatsapp messages which are annexed to the application as well as various photographs indicate that they were closely acquainted with each other.

4. Learned APP submitted that the First Information Report indicates that the accused made false promises to the complainant. The accused had physical relationship with the complainant. The consent was obtained by promise of marriage.

5. In the light of the factual aspects narrated hereinabove, it is apparent that the relationship was consensual. The complainant is a major girl. Frequently, on several occasions, the complainant and the accused had sexual relationship at the resort. Considering the aforesaid aspect, it is debatable as an offence under Section 376 of IPC or 420 of IPC, whether both the offences are made out against the accused. Hence, the applicant can be granted the relief under Section 438 of Cr.P.C.

#### **ORDER**

- i) ABA No. 2309 of 2018 is allowed.
- ii) In the event of arrest of applicant in connection with C.R. No. 314 of 2018 registered with Deonar Police Station. The applicant be released on bail on furnishing PR bond in the sum of Rs. 20,000/- with one or more sureties in the like amount.
- iii) The applicant shall report the Investigating Officer as and when called for. The applicant shall not tamper with the evidence and shall not approach the complainant.
- iv) The application stands disposed.

**(PRAKSAH D. NAIK, J.)**