

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

ANTICIPATORY BAIL APPLICATION NO. 2467 OF 2018

Varughese Thomas

... Applicant

Vs.

The State of Maharashtra

... Respondent

...

Ms. Laksmi Murali I/by Lakshmi Murali & Associates for the applicant.

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

Mr. Sharad Nimle, PSI, MIDC Police Station is present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 4th DECEMBER, 2018.

P.C.

1. Applicant is seeking anticipatory bail in connection with CR No. 521 of 2018 registered with MIDC Police Station for offence punishable under Sections 323, 504, 506, 376 of Indian Penal Code.

2. The applicant had preferred an application for anticipatory bail before the Sessions Court which was rejected on 28th November, 2018. The prosecution case is that somewhere in April, 2016, the accused was a member of Whastapp group and there was exchange of messages between the complainant and the applicant. The complainant informed the accused that she was suffering from severe depression and bipolar disorder. Thereafter

there were several calls amongst both of them. On 18th May, 2016, the accused told the complainant to wait near Parel Station and he came there in his car. He brought Mangalsutra with him. Accused put Mangalsutra around her neck and told her that she is wife. Thereafter, whenever there was chat between them, accused told the complainant that she is wife. On 25th May, 2016 since she was not keeping well, the accused took her in Seven Hill Hospital and after treatment she was taken to his house. At that time, the accused insisted that the complainant is his wife and tried to demand sexual favour. After the husband of the complainant went out, the accused visited the house on 29th May, 2016 and had forcible intercourse with her. Even on 30th May, 2018, the accused again visited her house and had sexual intercourse on two occasions. He again visited on 1st June 2016. Thereafter applicant started avoiding her. The complainant went to Australia in June 2016, she returned to India on 17th July, 2016. It was noticed that the accused had blocked her whatsapp number. When she went to meet him, she was abused, assaulted and threatened by the accused/applicant. Hence, FIR was lodged on 11th November, 2018.

3. On perusal of the First Information Report, it is apparent that

the accused and the complainant were allegedly acquainted with each other from February, 2016. The first incident of meeting with the complainant had occurred on 18th May, 2016. It is alleged that there was forcible sexual intercourse on 28th May, 2016, 29th May, 2016 and 30th May, 2018. Thus, the last alleged incident had occurred almost after a period two years. According to the applicant, he was working in his office on the aforesaid date when the alleged incident had occurred. Apart from that the complainant did not lodge any complaint of the said incidents after the alleged sexual assault. FIR also indicate that after having physical relationship, the accused started avoiding her since 2016 which apparently is the reason for lodging the First Information Report.

4. Learned APP submitted that the complainant was in disturbed state of mind. She was suffering from from severe depression and bipolar-disorder. The accused has taken undue advantage of the situation and had physical relationship with the complainant.

5. As stated above, there was a gap from the year 2016 to 2018 during the said period there was no acquaintance between the applicant and complainant. *Prima-facie*, it appears that the

relationship between the applicant and the complainant is consensual in nature. In view of the above, the grant of anticipatory bail is made out.

ORDER

- i) In the event of arrest of applicant in connection with C.R. No.521 of 2018 registered with MIDC Police Station, the applicant be released on bail on furnishing P.R. Bond of Rs.25,000/- with one or more sureties in the like amount.
- ii) The applicant shall attend Investigating Officer of concerned Police Station once in a week on Saturday between 10 am and 12 noon for a period of one month and thereafter as and when called by the Investigating Officer till the filing of the chargesheet;
- iii) Anticipatory Bail Application stands disposed off.

(PRAKASH D. NAIK, J.)