

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

ANTICIPATORY BAIL APPLICATION NO. 7 OF 2019

Ganesh Dnyanoba Gawade Patil ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Naveen Kumar Sharma I/by. Preetisingh J. Pardeshi for Applicant.
Ms. Sharmila S. Kaushik, APP for Respondent – State.
Mr. Sagar S. Kale, PSI Kondhwa Police Station, Pune.

CORAM : NITIN W. SAMBRE, J.
DATE : JANUARY 4, 2019.

P. C. :

. The Applicant is seeking pre-arrest bail in Crime No. 812 of 2018 punishable under Sections 376, 420, 406, 312, 313 of Indian Penal Code.

2. Perused the First Information Report and other documents which are placed on record so also the order passed by the learned Sessions Judge rejecting the prayer for grant of pre-arrest bail. If the contents in the First Information Report, which in my opinion are too vague to be appreciated, particularly in absence of the specific dates and

the events of alleged commission of crime, it is difficult to infer the *prima facie* involvement of the Applicant in the crime in question.

3. The observations of the Apex Court in the latest Judgment in the matter of ***Dr. Dhruvaram Murlidhar Sonar V/s The State of Maharashtra & Ors. in Criminal Appeal No. 1443 of 2018 arising out of S.L.P. (Criminal) No. 6532 of 2018***, particularly paragraph 20 if appreciated, in my opinion, the case of the Applicant is squarely covered to the extent of considerations for grant of pre-arrest bail. Paragraph 20 of the said Judgment reads as under :-

“20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where

an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the Indian Penal Code.”

4. In view of above, the case for grant of pre-arrest bail to the Applicant is made out. Hence, the following order.

ORDER

- (A) In the event of arrest in Crime No. 812 of 2018 punishable under Sections 376, 420, 406, 312, 313 of the Indian Penal Code, the Applicant be released on furnishing PR Bond of Rs. 25,000/- with two sureties in the like amount.
- (B) The Applicant shall not tamper the evidence of the prosecution nor influence the prosecution witnesses.
- (C) The Applicant shall attend the Investigating Officer on 14th, 17th and 21st January 2019 between 10.00 a.m. to 12.00 noon and thereafter as and when directed.

5. Anticipatory Bail Application stands disposed of accordingly.

(NITIN W. SAMBRE, J.)