

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

ANTICIPATORY BAIL APPLICATION NO.968 OF 2019

Harshal Mangesh Mandhare Applicant

versus

The State of Maharashtra Respondent

**WITH
CRIMINAL APPLICATION NO.865 OF 2019
IN
ANTICIPATORY BAIL APPLICATION NO.968 OF 2019**

Mrs.Arati Rahul Sane Applicant/
Intervener

IN THE MATTER BETWEEN :

Harshal Mangesh Mandhare Applicant

versus

The State of Maharashtra Respondent

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- Mr.Kuldeep Nikam, Advocate for Applicant.
- Ms.S.S. Kaushik, APP for the State/Respondent.
- Mr.Sandeep Bali, Advocate for Intervener in APPP No.865/19.
- A.D. Ghodke, Alankar Police Station, Pune, present.

**CORAM : SARANG V. KOTWAL, J.
DATE : 29th JULY, 2019**

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.22/19 registered with Alankar Police Station, Pune, under section 376 of the Indian Penal Code.
2. The FIR is lodged by the prosecutrix on 23/01/2019. She has stated in her FIR that she had got married to her husband on 26/12/2004. She was not on good terms with her husband and they were in the process of entering into the matrimonial proceedings for divorce. From the year 2007 to 2013 she was residing in USA. She came back to India in the year 2013. She has stated in her FIR that she was knowing the present Applicant since past 19 years. When her husband used to visit Dubai in relation to his work, the Applicant and prosecutrix meet. In the year 2015 the Applicant told her that he was getting not along well with his wife and suggested that the Applicant and the prosecutrix could get married. He promised to marry her. He used to visit her house and they established physical relations. It is her case that she used to tell him that

they could have physical relations after they got married. However, the Applicant forced her to keep physical relations. It is further mentioned in the FIR that in October 2015, she saw photographs of the Applicant and his wife wherein they were seen happy together. Therefore, she decided to keep away from the Applicant. Thereafter the Applicant told her that he was still serious about marrying her. Then they even visited various hotels and they were regularly having physical relations at different places. In February 2018 the prosecutrix gave him ultimatum. Even at that time, the Applicant promised that he was getting married with her. In March 2018, again after all this, they had physical relations. The same thing was repeated in December 2018. The prosecutrix has stated that every time in spite of her resistance, they had physical relations. Based on these allegations, the FIR is lodged.

3. Heard learned Counsel Mr.Kuldeep Nikam for the Applicant, learned Counsel Mr.Sandeep Bali for the Intervener and learned APP Ms.S.S. Kaushik for the State.

4. Learned Counsel Mr.Nikam submitted that bare perusal of the FIR shows that physical relations were purely consensual and there was no force involved. Allegations are in respect of period between 2015 to 2018. It cannot be said that the prosecutrix was not aware of what she was doing.
5. As against these submissions, learned APP Ms.S.S. Kaushik submitted that subsequently the provisions of section 313, 420, 465 and 471 of IPC are also added in the investigation. She submitted that the prosecutrix was forced to terminate her pregnancy and therefore the Applicant did not deserve protection of anticipatory bail.
6. Learned APP produced before me a supplementary statement of prosecutrix which shows that on 09/02/2016, the prosecutrix was taken to a hospital at Pune by the Applicant and there she was made to terminate her pregnancy. On that occasion, the Applicant had signed falsely as her husband and therefore according to the prosecution the offence of forgery was committed.

7. I have considered all these submissions. The FIR shows that the prosecutrix had established physical relations with the Applicant behind the back of her husband. She was aware that she herself was married and the Applicant was also married. The Applicant is an educated lady. Therefore it cannot be said that she was not aware of the consequences of her act. Even as per her supplementary statement, her pregnancy was terminated in February 2016. Even thereafter their physical relations continued. It is difficult to accept that such relations were forcefully developed and kept by the present Applicant. The long history and different visits to various places and lodges show that the prosecutrix was a willing partner in the entire act and therefore at this stage, no offence is made out against the present Applicant. Custodial interrogation of the Applicant is not necessary.

8. Needless to mention that all these observations are restricted for the purpose of deciding this anticipatory bail

application only. The trial Court shall not be influenced by these observations when trial takes place. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.22/19 registered with Alankar Police Station, Pune, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)