

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

ANTICIPATORY BAIL APPLICATION NO. 910 OF 2018

Arvind Mishra	...	Applicant
Versus		
The State of Maharashtra & Anr.	...	Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 911 OF 2018**

Sadanand Upadhyay @ Amit Upadhyay	...	Applicant
Versus		
The State of Maharashtra & Anr.	...	Respondents

Mr. Aniket Nikam i/b Mr. Aashish Satpute for the Applicants in both Applications.
Mr. Samir Vidya for Intervener.
Mr. S.H. Yadav, A.P.P. for the Respondent – State.
Mr. D.N. Dhole, P.S.I. Vimantal Police Station, Pune, present.

CORAM : P.N. DESHMUKH, J.

DATED : 8th APRIL, 2019.

P.C. :

1 Heard learned Counsel for applicant and learned A.P.P.
Perused the case diary.

2 Both these Applications are arising out of crime No.459 of
2018 registered with Vimantal Police Station, Pune City. Admittedly,

applicants were protected by interim order of this Court dated 02.05.2018, without considering their case on merits but on observing that they were protected by trial Court by its interim orders, earlier, which was rejected on 19.04.2018 by keeping said order in abeyance till 03.05.2018. As such interim protection granted by this Court was further continued beyond vacation till 04.06.2018, which is in force till today since extended from time to time.

3 During above period, major part of investigation is over. Learned A.P.P., on instructions, makes statement that charge-sheet in this crime is likely to be filed within a period of four weeks. In view of statement made in spite of specific opportunity having been given to applicants, either to prosecute with the applications or to prosecute the same on filing of charge-sheet, learned Counsel did not avail the same and on instructions, submits that both the applications be heard on merits.

4 Heard learned Counsel for applicant and learned A.P.P. Perusal of report would reveal that in the year 2005 when complainant was attending English Speaking Class at Ranchi, Jharkhand State, applicant Sadanand was teacher and as such they were knowing each other, who, after complainant left the classes, was contacting her on phone till 2012, time and again and was proposing for marriage which proposal was not

accepted by complainant and was therefore refused. In this background, when complainant shifted to Delhi and was working as air hostess, applicant contacted her, at her place at Delhi and on the pretext of marriage, developed physical relations with her against her wish. Applicant kept visiting complainant at her place at Delhi from time to time till 2014 and used to have sexual intercourse with her against her wish promising marriage with her in short time. However, in June 2014, informed prosecutrix his inability to marry her as his marriage was fixed with some other girl. At that time complainant lodged report against applicant at Delhi in which proceedings he was released on bail as applicant in that proceeding undertook to marry complainant and accordingly, on 08.12.2014 married with her.

5 It is the case of the complainant that thereafter she was staying with applicant Sadanand in Pune, during which period applicant was insisting her to withdraw her report lodged at Delhi filed against him and used to extend threats to divorce her, if she did not withdraw the same and for this reason as complainant wanted to continue her marriage with applicant withdrew her complaint and the case was accordingly closed in July 2016.

6 In spite of complainant favouring her husband as aforesaid, while they continued staying at Pune in rented premises, applicant was often saying her that she had lodged case against him and on that count, used to assault her and abused her from time to time and in April 2017 and thereafter subjected her to carnal intercourse against her wish on extending threats and causing injuries. Complainant though informed this fact to her parents, who advised her to lodge report, finding that this would give rise to their matrimonial discord, complainant choose to not to file any report at that time. As per her report thereafter in July 2017, when applicant Sadanand/her husband was out of house, applicant Arvind, in connected Anticipatory Bail Application No.910 of 2018, while staying in their house as was related to applicant Sadanand, one day while complainant was alone in the house, sexually assaulted her by subjecting her sexual intercourse and had extended threats to not to disclose to anybody. From the report it is found that on arrival of her husband, when she disclosed said fact of co-accused Arvind, her husband did not relied upon her saying that she is making false allegations. Further report would reveal that in this background, applicant Sadanand continued forcible relations with her by having sexual intercourse, carnal intercourse against her wish and had also assaulted her time and again due to which sustain injuries and had obtained treatment from Government hospital at Pune.

7 In the background of above facts, in the month of November 2017, she found her husband staying somewhere else alone and was therefore compelled to go back to her parental home at Ranchi, when her parents and herself contacted applicant Sadanand's parents, by visiting their native place at Village Bramhandiya, District Topchanchi, Dhanbad, Jharkhand State, when they were informed that Sadanand has not come back home and then she should go and stay with him wherever he resides. Applicant then came back to Pune on 03.12.2017, since then whereabouts of applicant Sadanand are not known.

8 Learned Counsel for applicant had repeatedly stressed upon saying that inspite of allegations made by complainant are of the year December 2015 till December 2017, she had not lodged any report earlier and had further submitted that the allegations made in the report are totally false. Submissions advanced do not stand for any reason as from the tenure of report it is found that inspite of the manner in which complainant was treated by applicant Sadanand, and though was subjected to sexual assault by accused Arvind, and inspite of applicants making complaints to her husband, her complaints were not relied, and turned down to be fake, no case is made out, and in fact complainant had stated in the report that inspite of above incidents, she preferred to face the situation as she never wanted break up of her marriage. From the report it is also

established that inspite of applicant Sadanand's demand for divorce since complainant did not agree to same, in November 2017, applicant Sadanand left her company and since then did not meet her.

9 In the background of above, though learned Counsel for applicant had also made an attempt to say that even today applicant is willing to cohabit with her in fact had filed application for restitution of conjugal rights before the competent Court and had issue legal notice to complainant to cohabit with him, these aspects are by itself not sufficient to allow the application, as apart from report, there is other corroborative evidence as well as medical evidence which prima facie support the contentions raised in the report.

10 Having considered role attributed to applicants in both the applications as contents in the report are found substantiated by supporting documents, and as investigation is still in progress, applications are liable to be dismissed, hence, following order :

ORDER

Both the Applications are dismissed.

(P.N. DESHMUKH, J.)