

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1218 OF 2019

Prashant Kisan Kshirsagar] ... Applicant

Versus

The State of Maharashtra] ... Respondent

Mr. Viresh V. Purwant, Advocate for the Applicant.

Ms. S.S. Kaushik, APP for the State/Respondent.

API Bajirao Dhekale attached to Satara City Police Station, Satara present.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 19th AUGUST, 2019.

P. C. :-

1. The applicant is seeking anticipatory bail in connection with C.R.No.25/2019 registered with Satara City Police Station, Satara u/sec. 376, 313, 318, 201, 504, 506, 109 of I.P.C.

2. The FIR is lodged by the prosecutrix on 08/01/2019. She has stated in her FIR that, she got acquainted with the present applicant since February 2017. Slowly they developed close relationship. On 08/05/2017, the applicant took the prosecutrix to his brother's flat. There they had their first sexual intercourse. The prosecutrix has stated that, the sexual intercourse had taken place against her wish as

the applicant had threatened her. Even after that on many occasions they had sexual intercourse. The prosecutrix has stated in her FIR that, on all these occasions, physical relations were kept by the applicant by threatening her. It is alleged that, the applicant was threatening the prosecutrix that, he would upload her indecent videos which he had taken. The prosecutrix became pregnant. She came to know about her pregnancy in March 2018. The prosecutrix told this to the applicant. However, the applicant advised her to abort the child. They had their dispute. The prosecutrix did not want to terminate her pregnancy. It is mentioned in the FIR that, ultimately on 05/05/2018, the applicant got married with the prosecutrix at Satara in presence of few witnesses. Even after their marriage, the applicant avoided to reside with the prosecutrix. It is alleged that, on 17/05/2018, the applicant tried to add some powder to her tea. But at that time, no damage was caused. In July 2018, the prosecutrix was not feeling well and therefore, she was admitted to Civil Hospital, Satara. The prosecutrix was suspecting that, the applicant was trying to cause miscarriage. Therefore, she left the hospital. On 15/07/2018, the applicant brought electral powder and made her drink it with water. It is alleged that, he also gave some tablets. In the night, the

prosecutrix started suffering from pain. On the next day she went to the sonography centre. It was found that the foetus had died in the womb itself. The prosecutrix thereafter went to the hospital at Satara. On 19/07/2018 she had undergone surgical procedure. Even thereafter the applicant avoided to reside with the prosecutrix. The prosecutrix made complaint at the police station. Few attempts were made for mediation but they did not succeed. Finally, the prosecutrix lodged this FIR.

3. Heard Mr. Viresh V. Purwant, Ld. Counsel for the Applicant and Ms. S.S. Kaushik, Ld. APP for the State/Respondent.

4. Ld. Counsel for the applicant submitted that, from the statements in the FIR, it is clear that no offence is made out. The relationship was purely consensual. The prosecutrix and the applicant had even got married and therefore, no offence of rape is made out. He further submitted that, though there are allegations that the applicant was insisting that she should terminate her pregnancy, those allegations are not supported by any concrete material.

5. Ld. APP relied on the investigation papers and opposed the submissions of the Counsel for the applicant.

6. I have considered these submissions and perused the investigation papers. From the FIR it is clear that, though the prosecutrix had alleged that, the applicant had kept the physical relations by threatening her, the tenor of the allegations shows that, she was a consenting party and the relations were kept over a long period till she got pregnant. Thus, it appears that, the prosecutrix was a willing party. Therefore, at this stage, it is difficult to observe that, the applicant has committed that offence. As far as the allegations in respect of Section 313 and 318 of I.P.C. are concerned, there is no incriminating material to show that, the applicant himself had caused the death of the foetus. The prosecutrix had produced some medicines before the Investigating Officer purporting to be the medicine administered by the applicant. The report of the Medical Officer is not incriminating. The report shows that, these medicines would not cause abortion. The conduct of the prosecutrix also does not suggest that, the applicant had given some medicines. The investigation papers contains statement of Dr. Sanjay Jadhav. He has stated in his

statement dated 15/01/2019 that on 19/07/2018, he had performed surgical procedure for removing dead foetus. He had clearly stated that, the prosecutrix had not given reason for death of the foetus. The applicant was present with her and she had not made any allegation against him. Even, at this stage, there is nothing to suggest that the foetus had died because of some medicines given by the applicant. In this view of the matter, custodial interrogation of the applicant is not necessary. Hence, the following order.

ORDER

1. In the event of his arrest in connection with C.R.No.25/2019 registered with Satara City Police Station, Satara, the Applicant is directed to be released on bail on his furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
2. Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)