

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

ANTICIPATORY BAIL APPLICATION NO.974 OF 2019

Suhas Sunil Gaikwad	 Applicant
versus	
The State of Maharashtra	 Respondent

WITH

**CRIMINAL APPLICATION NO.952 OF 2019
IN
ANTICIPATORY BAIL APPLICATION NO.974 OF 2019**

Ms.Swati Vilas Bahule	 Intervener
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IN THE MATTER BETWEEN :

Suhas Sunil Gaikwad	 Applicant
versus	
The State of Maharashtra	 Respondent

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- Mr.S.S. Butala a/w Mr.Mehul Hartalkar i/b. Mr.S.S. Butala & Associates, Advocate for Applicant.
- Mr.Rahul V. Shinde, Advocate for Intervener.
- Mr.Rajan Salvi, APP for the State/Respondent.
- WPSI Ms.Prachi G. Todkar, Dehuroad Police Station, Pimpri-Chinchwad, present.

**CORAM : SARANG V. KOTWAL, J.
DATE : 13th AUGUST, 2019**

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.370/19 registered on 27/02/2019 with Dehuroad

Police Station, Pimpri-Chinchwad, under sections 376 and 420 of the Indian Penal Code.

2. The FIR is lodged by the prosecutrix. She has stated that the present Applicant is her maternal cousin. In the year 2012, he expressed his love for her. Initially she refused, but then she kept in touch with the Applicant. In the year 2016 the Applicant again met her in a family function and reiterated his love for the prosecutrix. In spite of her reluctance, he convinced her that since he was going to marry her, they should have physical relations. Therefore based on his promise, the prosecutrix and the Applicant had physical relations on three occasions. The prosecutrix was always asking him about getting married and the Applicant used to avoid the issue on some pretext of the other. The Applicant thereafter was employed at Nashik. While going from Nashik to Kolhapur, to visit his house, he used to call the prosecutrix to Pune to meet him. The prosecutrix accordingly used to meet him frequently. On 03/12/2018, she again pressed for his answer for their

marriage. At that time for the first time, the Applicant specifically refused to marry her. Even then, the prosecutrix was hopeful. On 12/02/2019 she came to know that the Applicant was engaged to another girl. Therefore the prosecutrix was convinced that she was cheated and the Applicant never intended to marry her. On this basis, she lodged her FIR.

3. Heard learned Counsel Mr.Mr.S.S. Butala for the Applicant, learned Counsel Mr.Mr.Rahul V. Shinde for the Intervener and learned APP Mr.Rajan Salvi for the State.
4. Mr.Butala submitted that, in the FIR, the first informant has stated that relationship was consensual and there was no force involved in it. He submitted that the prosecutrix was aware of the consequences of her acts. He submitted that the other maternal uncle of the prosecutrix i.e. the Applicant's uncle Rahul Janardhan Gaikwad had filed an affidavit in Court of Sessions at Pune, in which it is mentioned that the Applicant's family was willing to give permission for the marriage between

the prosecutrix and the Applicant. But the prosecutrix's family was opposed to such relationship.

5. He therefore submitted that the Applicant's intention was always clear and he never wanted to cheat the prosecutrix. Mr. Butala relied on the judgment of the Hon'ble Supreme Court in the case of *Uday Vs. State of Karnataka, as reported in (2003)4 SCC 46*. In that case, the Hon'ble Supreme Court had considered the factual aspect in that case and had observed that if the prosecutrix willingly consented to have sexual intercourse with the Applicant with whom she was deeply in love, on a promise that he would marry her on a later date, meant she also desired it. Mr. Butala therefore submitted that in the present case also the prosecutrix was in love with the Applicant, as is made out in the FIR and therefore no offence is committed by the Applicant.

6. As against these submissions, the learned Counsel for the Intervener placed reliance on the judgment of the Hon'ble

Supreme Court in the case of *Anurag Soni Vs. State of Chhattisgarh passed in Criminal Appeal No.629/19*, wherein the Hon'ble Supreme Court had considered the facts in that case and had observed that if from the inception, the promise given by the accused to prosecutrix was a false promise and if from the very beginning there was no intention of the Applicant to marry the prosecutrix, the consent of the prosecutrix was on misconception of facts and it could not be said to be a valid consent and the accused could not escape charges of rape as defined in section 375 of IPC.

7. I have considered all these submissions. In the present case from the FIR itself it is clear that, the Applicant was continuously making promises to marry the prosecutrix. In fact, the informant had mentioned that she gave her consent for physical relations only on the promise made by the Applicant. Therefore if the Applicant's intentions were not honest right from the beginning, then, the ratio of Anurag Soni's case (supra) is squarely applicable to the present facts of the case.

8. It is also important to note that while the Applicant was granted interim protection by this Court, during the pendency of this application, the Applicant went ahead and got married to another girl on 02/08/2019. This not only shows his total disregard to the Court proceedings, but also throws lights on his dishonest intention. The submissions that the FIR is lodged belatedly does not have force because the prosecutrix had explained that she sincerely waited for the Applicant to take steps to get married with her. It is only in the December 2018 that the Applicant for the first time refused to marry her and in February 2019, he got engaged to another girl. Therefore all this while the prosecutrix was understandably waiting for his decision. In this situation, it cannot be said that there is inordinate delay in lodging FIR.

9. In both these cases i.e. Uday and Anurag Soni (Supra) the Hon'ble Supreme Court had considered the evidence which was led during trial. Today I am considering these questions at a

very threshold when even the investigation is not completed. In this view of the matter, I am not inclined to grant protection to the Applicant because his custodial interrogation is necessary and if he is protected, that will hamper the investigation. Hence the application is rejected.

10. At this stage, the learned Counsel for the Applicant prays for extension of interim relief granted to the Applicant. However, since the Applicant has misused the liberty granted to him by way of interim protection and had got married with another girl when the matter was pending before this Court. He has thereby jeopardized future of another girl. Therefore I am not inclined to grant any further protection. The prayer for extension of interim order is rejected.

11. Accordingly the application for anticipatory bail and application for intervention are disposed of.

(SARANG V. KOTWAL, J.)