

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

ANTICIPATORY BAIL APPLICATION NO.1666 OF 2019

Santosh Ramrao Mahale

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr. Aniket Nikam I/b. Vivek N. Arote, Advocate for Applicant.
- Smt. A. A. Takalkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 29th JULY, 2019

P.C. :

1. The applicant is seeking anticipatory bail in connection with C.R. No.72/2018 registered at Sangavi Police Station, District Pune, on 10/2/2018 under sections 143, 147, 148, 376, 420 and 149 of IPC.

2. The FIR is lodged by the prosecutrix. According to her, she was working as a maid in Baner area of Pune. She started working in one Supreme Palashiv Society in the house- keeping

department. That time she got acquainted with the present applicant who was working as a Supervisor in the same society. Their friendship developed into love affair.

3. The applicant told her that he wanted to marry her but as he was financially weak, he suggested that they could live together instead of getting married. The prosecutrix started residing with him in his room. They were in a live-in-relationship. After a few days, they started residing in Pimple Nilakh. It is her case, that, whenever she used to broach the topic of getting married, he used to make some excuse. During their stay together, he obtained almost Rs.6 Lakhs as financial aid from her. That amount is still not returned. After a few months, the prosecutrix came to know that the applicant was already married and had a family of his own. She got to know that his family was also residing in Pune. When the applicant was confronted by the prosecutrix, he abused her. The prosecutrix told him that she did not want to keep relations with him and demanded her money back. The applicant thereafter left the place. After about two

months, the applicant himself called her and told her that he was afraid of his family and therefore he was unable to meet her. The prosecutrix went to Gujarat where he was working. Then they resided in a lodge for 2 to 3 days. Thereafter, applicant left her at Pune and went back to his house at Nashik. After a few months, both of them went to Trimbakeshwar to get married. Even there, he avoided to get married. He gave excuse that there was no witness available for the marriage. At that place they resided together in a lodge. After that she came back to Pune. Thereafter, the applicant had fallen sick. The prosecutrix herself had admitted him to the hospital and after he had recovered she brought him back to her house. In April 2017 and July 2017, the family of the applicant assaulted the prosecutrix with weapons like iron rods and sticks. The prosecutrix had lodged complaint against his family. After that the applicant again started residing with the prosecutrix. It is her case that, on one occasion, he stole Rs.50,000/- kept by the prosecutrix in her room and took away one mobile phone. Since then he did not contact her. Based on these allegations, the FIR is lodged.

4. Heard Mr. Aniket Nikam, Ld. Counsel for the applicant and Smt. Takalkar, Ld. APP for the State.

5. Mr. Nikam submitted that the facts leading to the FIR shows that there was consensual relationship and they were living together. The conduct of the prosecutrix shows that inspite of knowing about his family, prosecutrix continued to keep relations with the applicant. Therefore, at the belated stage, it is not open to her to claim that her consent was obtained on misrepresentation of facts. He submitted that for the assault on the prosecutrix by the family of the applicant, separate chargesheet is already filed. In that case, the prosecutrix had not claimed that she was cheated by the applicant.

6. Smt. Takalkar, Ld. APP submitted that the offence is serious. In addition to allegations of rape, there are allegations that the applicant had stolen Rs.50,000/- and one mobile from her house.

7. I have considered these submissions. The FIR shows that the prosecutrix repeatedly kept their relations going inspite of knowing that he was married. The prosecutrix herself had given him money for helping him. They had gone to Trimbakeshwar to get married. She looked after him when he was in the hospital. They were staying together. Their conduct does not show that the prosecutrix was under misconception of facts and her consent for sexual relations was obtained against her wish. In so far as allegations of theft are concerned, the FIR itself shows that, in the past, she had helped the applicant financially to the tune of Rs.6 Lakhs. Even in respect of theft, she has not given any specific date on which the applicant had stolen that amount and the mobile phone. Therefore, these allegations are not described with basic details. In this view of the matter, custodial interrogation of the applicant is not necessary. The Trial Court will have to decide whether any offence was committed by the applicant. The Trial Court shall not be influenced by the observations made in this order. The observations are restricted to deciding this application. Hence, the order.

ORDER

- (i) In the event of his arrest in connection with C.R. No.72/2018 registered at Sangavi Police Station, District Pune, the applicant is directed to be released on bail on his executing P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in like amount.
- (ii) The application is accordingly disposed of.

(SARANG V. KOTWAL, J.)