

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1818 OF 2019

Hemang Dinesh Patel	]	... Applicant
Versus		
The State of Maharashtra	]	... Respondent

Mr. Anil Kamble, Advocate for the Applicant.

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

API Arun Pathar attached to Kharghar Police Station present.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 20th AUGUST, 2019.

P. C. :-

1. The applicant is seeking anticipatory bail in connection with C.R.No.281/2019 registered with Kharghar Police Station, Navi Mumbai u/sec.376 (2) (a), 323, 504, 506 of I.P.C.

2. The FIR is lodged by the prosecutrix on 24/07/2019. She has stated in her FIR that, she was earlier married to her first husband in the year 2006. She had a daughter from that marriage. Since the year 2009, the relations between the prosecutrix and her husband became strained and they started residing separately. In the year 2008, the prosecutrix's brother purchased a flat from the present applicant who was a builder and from then onwards they developed friendship. The

prosecutrix started residing with the applicant at Kharghar. It is clearly mentioned in the FIR that, they were in a live-in relationship. In the year 2014, the prosecutrix gave birth to the applicant's son. This fact is accepted in the FIR. The prosecutrix was insisting that, they should get married. The applicant asked her to obtain divorce from her first husband. In the year 2015, the applicant himself obtained divorce from his wife. The applicant had two daughters from his earlier marriage. Thereafter, the applicant started residing with the prosecutrix. It is her case that, the applicant's father was opposed to their marriage. She came to know in the year 2016 that, the applicant was having love affair with another lady. Since, then their relations became strained. It is alleged that, the applicant started avoiding her. The prosecutrix also avoided to keep relations with the applicant. It is alleged that, on 24/05/2019, the applicant came to the prosecutrix's house at odd hours around 1.20 a.m. and tried to get intimate with her. But the prosecutrix avoided the applicant. Based on these allegations, the FIR is lodged.

3. Heard Mr. Anil Kamble, Ld. Counsel for the Applicant and Ms.S.S. Kaushik, Ld. APP for the State/Respondent.

4. Ld. Counsel for the applicant submitted that, the allegations in the FIR clearly show that, the prosecutrix and the applicant were in a live-in relationship. The relationship was kept between them over a number of years. The couple was blessed with a son. Therefore, no offence u/sec. 376 (2) (a) of I.P.C. as alleged is made out against the present applicant.

5. Ld. Counsel for the informant submitted that, the applicant is trying to approach the prosecutrix and he is residing in the same building. Therefore, suitable conditions may be imposed so that he cannot harass the prosecutrix.

6. Ld. APP relied on the facts in the case.

7. I have considered all these submissions. Bare perusal of the FIR shows that, the relationship between the prosecutrix and the applicant was consensual. They had a son from the relationship. By no stretch of imagination it can be said that, the offence of rape is committed by the present applicant. Therefore, he is entitled for protection of anticipatory bail. However, the contention of the prosecutrix that, the

applicant is harassing her, has to be taken care of and suitable conditions can be imposed on the applicant. Hence, the following order.

ORDER

1. In the event of his arrest in connection with C.R.No.281/2019 registered with Kharghar Police Station, Navi Mumbai, 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. The applicant shall not reside in the same building where the prosecutrix is residing.
3. The applicant shall not try to contact the prosecutrix and cause her any harassment.
4. Violation of any of these conditions will entitle the informant to approach this Court for cancellation of anticipatory bail granted to the applicant.
5. Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)