

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

ANTICIPATORY BAIL APPLICATION NO. 2066 OF 2019

Sumit Sunil Saykar

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Aniket Nikam I/b. Vivek Arote, Advocate for Applicant.

Smt. A. A. Takalkar, APP for the State/Respondent.

Mr. S. L. Nanaware, PSI, Loni Kalbhor Police Station present.

CORAM : SARANG V. KOTWAL, J.

DATE : 24th SEPTEMBER, 2019

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No. 604 of 2019 registered with Loni Kalbhor Police Station, under sections 376 and 420 of the Indian Penal Code.

2. The FIR is lodged on 24/08/2019 by the prosecutrix herself. She has stated that she was a married lady having child of about three and half years of age. She was residing separately from her husband because of their matrimonial dispute. She was

residing with her mother since April 2015. In July 2018 she came in contact with the applicant through a social networking site. They developed love relationship. Their friendship blossomed. She has mentioned in the FIR that on one occasion the applicant had taken her to a room and demanded physical relationship, but she refused at that time. Thereafter for two months she did not talk with him, but he persuaded her and told her that he would marry her and lend his name as father to her child. He further told her that if she refused, he would commit suicide. Thereafter in November 2018 the applicant took her to a lodge at Urali Kanchan and on the promise that he would marry her, developed physical relationship with her. It is her case that he clicked obscene photographs. Subsequently also whenever she was alone in the house, he used to visit her and had physical relations. Every time the prosecutrix asked him about getting married, he avoided to answer and gave some excuse or the other. After a few days when the prosecutrix confronted him seriously about the marriage, he refused and told her to take any step, she could take. The prosecutrix consumed poisonous substance. The applicant himself

admitted her in the hospital. At that time, he had mentioned a false identity for the prosecutrix. Even at that time, he told the prosecutrix that since he was planning to marry her, she should not lodge police complaint. After this incident, in May 2019 again he came back to her house and established physical relations. Thereafter the applicant's family members came to know about their relations. His family members started threatening the prosecutrix. The prosecutrix then again consumed poison and she was admitted to the same hospital. The applicant's brother contacted the prosecutrix's uncle and threatened him. They also issued threats that they would cause harm to the prosecutrix's son and that her photographs would be made viral. Thereafter, on third occasion she consumed poison and she was admitted to Sassoon Hospital, Pune. Thereafter finally the FIR was lodged.

3. Heard Mr. Aniket Nikam, learned counsel for the Applicant and Smt. A. A. Takalkar, learned APP for the State/Respondent.

4. Shri. Nikam submitted that the prosecutrix herself was a married lady and she was well aware of consequences of her act.

He submitted that the description in the FIR clearly makes out that there was consensual relationship and there was no force involved. The prosecutrix was an adult lady and, therefore, it cannot be said that her consent was immaterial in this case. He submitted that the prosecutrix was continuously alleging to commit suicide and that was one of the reasons why allegations appear to be false. He submitted that the marriage between the parties was impossible or improbable in view of the fact that the prosecutrix was also married.

5. Learned APP opposed this application and added that the FIR shows that the applicant vigorously pursued the prosecutrix in keeping physical relations. Initially, though, she refused, only after he had assured that he would marry her, she consented for physical relation. She pointed out that there was allegations of capturing of obscene photographs and threats to make them viral.

6. I have considered all these submissions. Shri. Nikam submitted that the mobile handset of the applicant was already surrendered to the police, therefore, his custodial interrogation is

not necessary.

7. The FIR clearly makes out that it is a serious offence. The prosecutrix had consented to have physical relations only on the assurance given by the applicant that he would marry her. Initially, the prosecutrix had refused his advances, but when the applicant had threatened to commit suicide and reiterated his intention to marry her, she had consented to have physical relations. When she realized that the applicant was not be serious in his intentions, she consumed poison on the first occasion. At that time itself, the applicant admitted her to the hospital and fortunately the incident did not escalate to a serious offence. The investigating agency has documents supporting that, on that occasion the prosecutrix had consumed poison. In spite of such serious incident, the applicant continued with his advances and again contacted the prosecutrix and they had their physical relation in May 2019, as well. However, after that, the applicant's family started threatening the prosecutrix's family and even threats were issued against the prosecutrix's son. The applicant had not taken any stand in support of the prosecutrix and had not taken

any steps in getting married with the prosecutrix. This conduct shows that, right from the beginning he never intended to marry with the prosecutrix. Therefore, at this stage, it is difficult to disbelieve the version of the prosecutrix that she had consented for physical relations only on genuine belief that the applicant was honest in his intentions of getting married with her. Whether the consent is vitiated or not, ultimately would be a matter of trial. But looking at the background of the case and particularly taking into account the fact that the prosecutrix had tried to commit suicide on three occasions, shows that their relationship was quite serious and the applicant was exploiting vulnerability of the prosecutrix. Threats were issued against her child. In this view of the matter, gravity of the offence assumes higher proportion, therefore, I am not inclined to grant anticipatory bail. Applicant's custodial interrogation is necessary. Though, the handset is submitted by the applicant to the police, I am not impressed with this submission simply because investigation is necessary to seize the handset which was actually used. The investigating agency can not rely on the applicant's stand that he was using the same handset.

However, it will not be proper to comment on that aspect any further because that would be a matter of investigation which can be effectively carried out only during his custodial interrogation. In this view of the matter, no case for anticipatory bail is made out.

8. The application is rejected.

(SARANG V. KOTWAL, J.)