

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

ANTICIPATORY BAIL APPLICATION NO.2303 OF 2019

Akshay Sanjay Dive	 Applicant
versus	
The State of Maharashtra	 Respondent

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- Mr.Sanjay P. Shinde, Advocate for Applicant.
- Mr.Prashant Jadhav APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 18th OCTOBER, 2019

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.I-513/19 registered with Upnagar Police Station, Nashik, under sections 376(1), 420, 506 of the Indian Penal Code.

2. The FIR is lodged on 07/09/2019 by the prosecutrix herself. She has stated in her FIR that she had got married with the husband on 10/12/2013 and she has a son from that marriage, who was three years of age at the time of lodging of FIR. She has further stated that the Applicant was her childhood

friend. About one year prior to lodging of the FIR he contacted the first informant through a social media site and got friendly with her. Initially she resisted his advances. In February 2019 she lost her father and on the pretext of showing sympathy, the Applicant developed close relations with her. It is her case that he took intimate photograph of her and on that basis started forcing her to keep physical relations with him. The FIR further mentions that on one occasion they had gone to a lodge and then they had their first physical relations. In July 2019, the husband came to know this. He got very upset and left the informant with the Applicant. The Applicant assured that they would get married and that he would look after her son. The son was kept with the informant's husband at that time. The matter reached police station. It is her case that under Applicant's pressure she executed her writing mentioning that she was staying with the Applicant in live-in-relationship. Thereafter, the Applicant kept her in the house of his aunt at Nashik Road and at that time they had their physical relations. The informant was asking about their marriage and he was avoiding to make any

commitment. Ultimately, he left the informant. The informant went to reside with her Aunt and thereafter lodged this FIR.

3. Heard learned Counsel Mr.Sanjay P. Shinde for the Applicant and learned APP Mr.Prashant Jadahv for the State.
4. Learned Counsel for the Applicant invited my attention to the station diary entry dated 30/07/2019 recorded at Upnagar Police Station, Nashik at 10.57 p.m. It is specifically mentioned in the station diary entry that the informant was leaving her husband voluntarily. She was willing to reside with the Applicant who was her childhood friend. Custody of her son was with her husband and Aunts and for that she would initiate proceeding in the Family Court.
5. Learned Counsel also relied on the notice dated 17/08/2019 issued on behalf of the informant's husband. The Applicant was one of the recipients. In the notice it was mentioned that the Applicant and the informant were in love

relationship and were exchanging conversations. They used to talk on phone on many occasions. Learned Counsel invited my attention to the application by the informant to the Commissioner of Police, Nashik, wherein she had made some allegations against her Aunt and her son. Learned Counsel for the Applicant submitted that the present FIR is lodged at her behest.

6. Learned APP opposed this application and submitted that the Applicant had kept the relations under threats and therefore offence is made out.

7. I have considered these submissions. I have perused the documents referred hereinabove. The FIR more than clearly mentions that they were in consensual physical relations. The informant had even left her husband and started residing with the Applicant. The station diary entry also supports the Applicant's case. Now the informant is taking stand that the station diary entry and the application to the Commissioner of Police, Nashik, were made at the behest of the Applicant. This

stand is difficult to accept. The informant, at the first instance in the station diary, did not make any allegations against the Applicant.

8. Taking over all view of these factors, it appears that it was a consensual relations and at this stage it is difficult to observe that the offence as alleged is made out against the Applicant. Therefore custodial interrogation of the Applicant would not be justified. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.I-513/19 registered with Upnagar Police Station, Nashik, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)