

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

909 ANTICIPATORY BAIL APPLICATION NO.317 OF 2020

ANIL S/O. GANPATRAO RUPEKAR
VERSUS
THE STATE OF MAHARASHTRA

Mr. B. P. Pande, Advocate for the applicant
Mr. R. B. Bagul, APP for the respondent/State.

CORAM : M. G. SEWLIKAR, J.

DATED : 22-12-2020

P.C. :-

1. This is an application under Section 438 of the Code of Criminal Procedure seeking anticipatory bail.

2. Facts leading of this application are that the informant is a married woman. Whereabouts of her husband are not known for the last ten years. The informant was working as an agent in the Collector Office, Aurangabad. She got acquainted with the applicant. At that time the applicant was working at Jalna. The applicant is a married man. After his transfer to Aurangabad, the applicant befriended the informant. He misrepresented her that his wife was ill. They developed physical relations. The informant consented for physical relationship as the applicant promised to marry her. After some days she insisted on the applicant to marry her but the applicant refused. On 03/02/2020 at 8.00 p.m. the applicant called her at Krantinagar and beat her and refused to marry her. Therefore, the applicant lodged the FIR on 01/03/2020 on the basis of which offence under Sections 376(2)(n),

417, 323, 504, 506 of the Indian Penal Code has been registered.

3. Heard Shri. Pande, learned counsel for the applicant, Shri. Bagul, learned APP for the respondent/State. From the FIR it is clearly discerned that the alleged physical relations were with the consent of the informant. He argued that the applicant had filed an application on 06/02/2020 with the City Chowk Police Station, Aurangabad against the informant in which he has alleged that the informant was blackmailing him. He further argued that to counter blast this complaint, present FIR has been filed. He further argued that charge-sheet has been filed. Therefore, custodial interrogation of the applicant is not necessary. Even the medical report is also in the negative.

4. Shri. Bagul, learned APP for the State submitted that the applicant misrepresented that his wife was seriously ill and he would marry her as she may leave for heavenly abode any time. The informant initially resisted. But because of the persistent demand by the applicant, she submitted herself for his lust. He submitted that the informant is living alone as her husband left her ten years ago and his whereabouts are not known. He submitted that the applicant very cleverly created a defence for himself by filing the application on 06/02/2020 making allegations against the informant that she was blackmailing him. He further submitted that the report of Medical officer is in the negative as the informant is a married woman. He submitted that there are statements of eye witnesses indicating that the applicant

used to visit the house of the informant. The charge-sheet has been filed showing that the applicant has obtained anticipatory bail.

5. From the tenor of the FIR it is seen that the applicant had physical relations with the informant with her consent. The applicant had disclosed to the informant that he was was a married man. There is nothing from the FIR which would indicate that the applicant had concealed the fact of his marriage from the informant. Therefore, with the consent of the informant the physical relations were established. The informant was well aware of the fact that the marriage could not happen as both, the applicant and the informant are married. Therefore with this knowledge she consented for the alleged physical relations. Moreover, the charge-sheet has been filed. Learned APP Shri. Bagul on the query of this Court stated that from the report it appears that the Investigating Officer did not even try to arrest the accused. This clearly shows that the Investigating Officer does not need the custody of the applicant. The Medical report is also in the negative. Having regard to this, custodial integration of the applicant does not seem to be necessary. In this view of the matter, interim relief is confirmed on the same terms and conditions. These observations are made for the disposal of this application only. The trial court shall not get influenced by these observations and can come to independent conclusion.

[M. G. SEWLIKAR, J.]