

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

50 ANTICIPATORY BAIL APPLICATION NO.835 OF 2020

SHAIKH PASHA S/O. SHAIKH HASHAM

VERSUS

THE STATE OF MAHARASHTRA

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Advocate for Applicant : Gaikwad Amol R.

APP for Respondent State : Mr.S.B.Narwade

Advocate for assist to P.P : Mr.S.G.Chapalgaonkar

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CORAM : MANGESH S. PATIL, J.

DATE : 03/11/2020

PC. :-

This is an application for anticipatory bail by the sole accused from Crime No.182/2020 registered with Peth Beed Police Station, Dist.Beed for the offences punishable under Sections 376 and 506 of the I.P.C.

2] Shorn of details the allegations as can be made out from the F.I.R. are to the effect that the informant is a married lady aged 35 years having few children from the husband. The applicant being a friend of her husband frequented their house. An intimacy developed. He committed rape on her in the year 2015. By threatening her of disclosing the relation, he made her to continue with the illicit relation. Her husband came to know about their such affair in the year 2016 and on that ground divorced her. It is then alleged that thereafter, the applicant promised to marry her, took her to an Advocate and got executed some writing on a stamp paper. Thereafter, for years together

the couple continued to have sexual relations at various places. However, recently he started avoiding her. When she realised that he was neglecting her she filed a maintenance proceeding in a Court at Beed. He thereafter, filed a Complaint against her bearing Crime No.52/2020 for the offence punishable under Section 420 of the I.P.C. by making allegations that she had cheated him by fabricating document about their marriage. Thus she alleged that under the pretext of solemnizing marriage, he made her to have sexual intercourse between the year 2016 to 2018.

3] The learned advocate for the applicant submits that accepting the allegations at their face value, it would reveal that there was a consensual sexual relation between the applicant and the informant. The relation dates back even to the time when her marriage was subsisting. Even after she was given divorce by her husband for the same reason she continued to have sexual relation with the applicant. She had also filed a proceeding under Domestic Violence Act against him which she had withdrawn but again filed another one under the same provision. Considering her character, even her father had affirmed disowning her right and relation with the parental family. In the affidavit scribed on a stamp paper she also admitted to have extorted an amount of Rs.80,000/- from the applicant and considering all these aspects, no offence can be said to have been committed. The applicant is ready to cooperate the Investigating Officer. His custodial interrogation is not necessary and the application may be allowed.

4] The learned A.P.P. assisted by the learned advocate Mr.Chapalgaonkar for the original informant strongly opposed the application. He submits that at this juncture no inference can be drawn much less exonerating the applicant.

Prosecutrix has specifically alleged about the applicant having subjected her to sexual intercourse under the pretext of solemnizing marriage. She has specifically stated about he having got executed a writing which she did not understand. The document is to be recovered for which his custodial interrogation is necessary and the application may be rejected.

5] I have carefully gone through the papers of the investigation. Even without indulging into any other discussion, it is suffice to refer to the contents of the F.I.R. Accepting the contents at their face value, it is evident that the applicant and the informant were continuously engaged in having an affair and illicit relation since the year 2015. Conspicuously such relation had started even when her marriage was subsisting. In fact she alleges that that was the cause for her husband to give her a *talaq* on 25/8/2016. It is equally important to note that even thereafter the couple continued to have sexual intercourse at various places. There are no allegations about he ever having performed any ceremony much less sufficient to constitute a marriage. She has also filed a proceeding against him under Domestic Violence Act which she subsequently withdrew and filed another one. All these facts and circumstances would indicate that in all probabilities it was a consensual relationship which continued for almost 3 years.

6] Taking into account all these facts and circumstances, in my considered view this is a fit case where applicant deserves to be granted anticipatory bail subject to usual terms and conditions which would enable the Investigating Officer to complete the investigation.

7] The application is allowed. In the even of arrest of the applicant in

connection with Crime No.182/2020 registered with Peth Beed Police Station, Dist. Beed for the offences punishable under Sections 376 and 506 of the I.P.C. he shall be released on bail on executing personal recognizance for an amount of Rs.20,000/- (Rs. Twenty thousand only) and furnishing a solvent surety in the like amount subject to following conditions :

- a] He shall attend the concerned Police Station on every Saturday between 10 a.m. and 12 noon till filing of the charge sheet.
- b] He shall not tamper the evidence or influence the witnesses.

[MANGESH S. PATIL, J.]

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