

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

42 ANTICIPATORY BAIL APPLICATION NO.1023 OF 2020

DHIRAJ RAMRAO NAIKWADE

VERSUS

THE STATE OF MAHARASHTRA AND ANR

...

Mr. Abhishek Kulkarni, Advocate for applicant

Mr. V.S. Badakh, APP for respondent Nos.1 and 2/State

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 07th DECEMBER, 2020.

PER COURT :

1 Present application has been filed under Section 438 of the Code of Criminal Procedure, 1973.

2 Heard both sides.

3 The learned Advocate appearing for the applicant submits that the applicant and the victim were in love relationship since 2010 and the fact was aware with their family members. He also submits that they were living together and he takes me through the documents, which have been produced by him, which are the photographs when they had visited Tirupati and also the bills of ornaments, especially the Mangalsutra, which according to the applicant was purchased for the victim. He states that the victim and the applicant had stayed at Tirupati for three days. He has produced the room

allotment receipt issued by Tirumala Tirupati Devasthan. He further submits that the FIR has been lodged with concocted story. If she had the intention to say that she was ravished by the applicant in 2011 for the first time then her silence till the FIR is lodged on 25.08.2020 is speaking for itself. The physical custody of the applicant is not at all required. He, therefore, prayed for anticipatory bail.

4 Learned APP strongly opposed the application contending that since the investigation is still pending the physical custody of the applicant is required. He also submitted that merely because the prosecutrix could not lodge the report earlier, that does not mean that the applicant has not committed any offence. The medical examination of the accused is yet to be conducted.

5 At the outset, it can be seen from the FIR that the first act alleged was in the year 2011. At that time also it is stated that the prosecutrix was 20 years old and then she says that till June, 2015 the applicant had sexual intercourse with her by giving her threat to kill her as well as to her mother and brother. Thereafter, she says that during June, 2015 to 2017 though she was appointed as Teacher, at the place of her residence at the posting the applicant had gone and had ravished her by giving same threat. Further, she states that in 2017 the applicant had called

her in a Lodge at Shirdi and had forcibly kept physical relations on the same threat. Further, she says that in 2018 by giving her threat to kill and defame her he had forcibly taken cheque of Rs.7,00,000/- drawn on Shikshak Bank, Shevgaon from her. Again from June, 2019, she has stated that the same act continued.

6 Thus, taking into consideration the contents of the FIR one fact certainly requires to be noted is that, that there is huge delay. Further, the documents, which have been produced by the applicant, especially the photographs, do not show any stress on her face and further she is silent about their visit to Tirupati. In her FIR, she has not stated any recent act of alleged rape, which could prompt the prosecution to have medical examination of the accused, and therefore, with such story and with the documents, those are on record, the physical custody of the applicant is not required for the purpose of investigation. Whatever investigation is there can be allowed to progress by putting certain conditions on the applicant. Hence, following order.

ORDER

1 Application stands allowed.

2 In the event of arrest of the applicant, in connection with Crime

No.1025/2020 registered with Rahuri Police Station, Dist. Ahmednagar for the offence punishable under Section 376, 386, 506 of the Indian Penal Code, the applicant be released on PR. and S.B. of Rs.15,000/-.

3 Applicant shall cooperate with the investigation and shall remain present before the Investigating Officer on every Sunday between 10.00 a.m. to 02.00 p.m. till 15.01.2021 or filing of charge sheet, whichever is earlier.

4 Further, if the Investigating Officer directs him to remain present for the medical examination, then he should make himself available on that day.

5 Applicant shall not tamper with the evidence of prosecution, in any manner.

6 He shall not indulge in any criminal activity.

(Smt. Vibha Kankanwadi, J.)

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