

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 302 OF 2020

Ganesh Balchandra Mali

...Applicant

Versus

The State of Maharashtra

...Respondent

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Mr. A. P. Mundargi Sr. Advocate a/w Mr. Shashank P. Borade i/b Mr. Kuldeep S. Patil, Advocate for the Applicant.

Mr. S. S. Pednekar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 5th MARCH, 2020

PC :

1. This is an application for Anticipatory Bail in connection with C.R.No. I-13 of 2020, registered with Mira Road Police Station, District- Thane Rural, for offences punishable under Sections 376, 377, 323, 506 (II), 506, 504 r/w 34 of Indian Penal Code (“IPC” for short). The First Information Report (for short ‘FIR’) was lodged on 12th January, 2020. This Court granted interim protection on 5th February, 2020.

2. The case of the complainant is that, she is actress by profession. The applicant is Police Officer. In June 2016 She had visited Valiv Police Station to lodge complaint against her roommate. The applicant was A.P.I. He had interaction with her and took her

phone number. Thereafter applicant kept on calling her on phone. They developed friendship. They met frequently. They went out together on several occasions. The applicant was transferred to Vikramgad and then to Wada. She was called at Wada in 2017-18. She stayed there for one night. Applicant had told her that he would divorce his wife and stay with her. Thereafter, he was transferred to Mira Road. They met on several occasions. Applicant demanded physical relationship. In April 2019, she was called at hotel. Applicant had physical relationship against her wishes. Whenever required applicant deposited money into her account or gave cash. Whenever questioned about marriage he kept on promising that he would marry at the earliest. They went to Satara and stayed in hotel. Applicant had forcible sexual relationship. In August, 2019 applicant took flat. They stayed together as husband and wife. They had physical relationship. She was subjected to unnatural Sex. He recorded video. However, he avoided performing marriage. She was assaulted. She was forced to sign on paper. She was threatened on 2nd December, 2019. Applicant quarreled with her. She was taken to unknown place in car. She was assaulted. On 6th December, 2019 she was assaulted by applicant and Baljit. The applicant attended suicide on account of tension relating to case investigated by him. On 7th December, 2019 she was threatened by wife of applicant on

13th December, 2019, Rs.50,000/- were credited into account of complainant from account of applicants wife. On 14th December, 2019 applicants wife lodged complaint against complainant. Thereafter, she apologized, FIR was lodged on 12th January, 2020.

3. The applicant's contention is that, the complaint is false. The complainant is major lady. As per complaint, both knew each other since 2016 and were allegedly intimate since April 2019. They resided together, they had physical relationship. This shows that relationship was consensual. The applicant is married person having two children, which fact was known to the complainant. There was no promise of marriage. The FIR itself prima facie does not disclose that, complainant was forced to keep sexual relationship. Whatsapp messages were exchanged between both, which shows that relationship was consensual. The complainant had lodged FIR in 2019 with similar allegations against Mahaveer Chauhan with Kashmiri Police Station, under Sections 376, 325, 504 & 506 of IPC. There is delay in lodging FIR. It is contended that, the station diary entries which were obtained through RTI indicates that, the complainant had visited Police Station on several occasions but did not lodge complaint. The wife of applicant lodged complaint against complainant on 13th December, 2019 with Valiv Police Station for offences under Sections 384, 389, 504 & 506 of IPC.

4. Learned APP submitted that, the applicant made false promise of marriage. Under pretext of promises, he had physical relationship with victim. She was threatened. The physical relationship was forcible.

5. The applicant was granted interim protection by order dated 5th February, 2020 with direction to attend Investigating Officer on on 10th, 11th and 12th of February 2020, between 11:00 a.m. to 01:00 p.m. Undisputedly, the applicant has complied the direction. The cell phone of the applicant was already recovered by the Police. The SIM card has been handed over to the Investigating Officer.

6. Learned APP on instructions submitted that, the investigating Officer has recorded the statement of the manager of the resort where allegedly both complainant and applicant had visited. The manager has stated that he do not recollect who had visited resort as several persons were visitors.

7. During pendency of the application for anticipatory bail before Sessions Court, the applicant and his wife granted interim protection by order dated 16th January, 2020. The advocate for applicant had relied upon some decisions in support of application. The Court considered ratio and facts and granted ad-interim relief with direction to attend concerned police Station on every Sunday

between 10.00 a.m. to 11.00 a.m. till decision of main application. The main application was then rejected on 24th January, 2020. As far as wife of applicant is concerned. It was observed that, role attributed to her is giving threats to complainant under Section 506 of IPC. Hence, question of anticipatory bail does not arise. It was further observed that, investigation is not complete. Possibility of tampering witnesses cannot be ruled out as applicant is Police Officer. Such activities is not expected from him. Hence, relief was not granted to applicant.

8. On perusal of FIR and other documents, it can be seen that, the case of the prosecution is that the complainant was acquainted with applicant in June, 2016. There was friendship. Both went to Several Places together for dinner, movies, long drive and spent lot of time together. In 2017-18 the complainant stayed for one night in the house of applicant. Complainant was informed that applicant is married person having two children. However, the applicant allegedly told complainant that he loves her and would perform marriage. In April 2019 they went to hotel at Mira road. There was alleged physical relationship against her wishes. Applicant gave her money on various occasions. In July they went to Satara and they had physical relationship. They stayed together from August, 2019. Amount of Rs.50,000/- was credited into account of complainant,

from applicant's account. There is exchange of messages between complainant and applicant. The wife of applicant lodged FIR against complainant on 13th December, 2019 alleging extortion. Complainant filed FIR against one Mahaveer Chauhan for offences under Sections 376, 325, 504 & 506 of IPC on 23rd September, 2014. The contents of FIR prima facie disclosed that the relationship was consensual. The applicant had attended police station. He was granted interim protection by Sessions Court with direction to attend Police Station. The applicant was granted interim relief by this Court with direction to attend Investigating Officer. The applicant has complied direction of this Court. Mobile phone of applicant is recovered. Sim card is handed over to Investigating Officer. Considering factual aspects of this matter custodial interrogation of the applicant is not necessary.

9. Hence, I pass the following order :

ORDER

- i) Anticipatory Bail Application No. 302 of 2020 is allowed;
- ii) In the event of arrest of applicant in C.R.No. I-13 of 2020, registered with Mira Road Police Station, District- Thane Rural, the applicant be released on bail on furnishing P. R. Bond in the sum of

Rs. 25000/-, with one or more sureties in the like amount;

- iii) The applicant shall attend Investigating Officer as and when called for till filing of charge-sheet.
- iv) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)