

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

ANTICIPATORY BAIL APPLICATION NO. 474 OF 2020

Rahul Dipak Parit

.. Applicant

Vs.

The State Of Maharashtra

.. Respondent

.....

Mr. Mahendra V. Kawchale, Advocate for Applicant.

Mr. H. J. Dedhia, A.P.P. for the State-Respondent.

.....

CORAM : PRAKASH D. NAIK, J.

DATE : 6th MARCH, 2020

PC.

1 The Applicant is apprehending arrest in connection with C. R. No.29 of 2020, registered with Gaonbhag Police Station, Ichalkaranji for offence punishable under Sections 376, 506 of the Indian Penal Code (for short "IPC").

2 The First Information Report was lodged by victim on 31st January 2020. It is alleged that, the Applicant is working as a Police Constable. In October 2018, the Applicant had sent friend request on Facebook to the victim. Since he was unknown, the victim had cancelled the request on two occasions. Thereafter, the Applicant sent messages on Facebook Messenger. She did

not respond. Subsequently, she accepted the friend request. Thereafter, she gave her mobile phone number to the Applicant. He developed friendship with her. The victim had told him that she has been preparing for competitive examination. The Applicant told her that he is also intending to appear for such examination. Thereafter, there were Whatsapp chats between both. On 23rd March 2019, the Applicant told her that he has arrived at Ichalkaranji and she should meet him. The victim met him at 07:00 pm. and returned home. In March 2019, the Applicant told her that he likes her and he is in love with her. The victim did not give response. In June 2019, the Applicant called her on her mobile phone and told her to meet him. The victim met the Applicant. He was accompanied by two friends. Whenever, they met, Applicant insisted that he intend to marry her. She consented for marriage. They went to some places for snacks. On 26th or 27th June 2019, she accompanied the Applicant and went to Mac Donald outlet. While returning, the Applicant took the car towards Kolhapur. Therefore, victim asked Applicant about change of route, he told her that he want to answer nature's call. He insisted that she should accompany him. Both of them went to lodge. He brought the bottle of water and

soft drink. After consuming same, she felt giddiness. She was subjected to sexual assault. The accused clicked nude photographs. He threatened her that, she should marry him or he will make the photo viral on social media. Due to fear she did not inform about the incident to anyone. Thereafter, the accused took her on several occasions to lodge and had physical relationship with her. She was threatened. On 14th October 2019, the Applicant called the victim at Jaishingpur and in presence of his cousin Mahesh obtained her signature on documents relating to marriage. The victim demanded the document. He gave false excuse. On 27th February 2019 the Applicant called the victim to lodge and had physical relationship with her without her consent. On 04th December 2019, uncle of the Applicant had called the brother-in-law of the victim and told him that the Applicant is married person. His wife is working in Police Department. The victim learnt about the same and informed the incident to her mother and sister. The Applicant was called at Ichalkaranji. He stated that, the information is false. The victim made inquiry and found that the Applicant had already married. She made a complaint on 06th December 2019. The Applicant was called by the police. The complainant also learnt that, the

accused had consumed poison at his residence and inquiry in that regard is going on with Gokul Shirgaon Police Station. Victim was called for inquiry. The FIR was lodged on 31st January 2020.

3 The Applicant preferred an application for Anticipatory Bail before the Sessions Court, which has been rejected by order dated 06th February 2020.

4 Learned counsel for the Applicant submitted that, the Applicant has been falsely implicated in this case. The allegation are false. The complainant had admitted that she was in love with Applicant. The Applicant had not clicked any objectionable photographs as alleged by the complainant. The FIR was lodged belatedly. The offence under Section 376 of the Indian Penal Code is not made out. The complainant is a major lady aged about 22 years. The complainant was fully aware of consequences of having physical relationship with the person to whom, she is not married. According to the Applicant as appearing in the complaint, looking at conduct of the complainant, possible inference which can be drawn is that,

alleged act of sexual intercourse was consensual and the complainant was consenting party. No complaint was filed by the complainant after the alleged act of intoxication. The statement of witnesses are already recorded. Custodial interrogation of the Applicant is not necessary. The Applicant is Government Servant in the event of arrest, his career could be at stake.

5 Learned APP submitted that, the accused made false promise of marriage and developed physical relationship with the complainant. The Applicant accused repeatedly insisted that he is in love with the complainant and intend to marry her and induced her to have relationship with him. The accused suppressed the fact that he is already married and gave false assurance to the victim about marriage. During the course of investigation, statement of witnesses were recorded which shows that, the complicity of the Applicant and false promise made by him. The document relating to the performance of marriage between the Applicant and his wife is dated 21st April 2016. It is submitted that the Applicant had also executed affidavit on stamp paper stating that he is unmarried. Applicant and the complainant are in love with each other. He is performing marriage with the complainant. On 14th October

2019, the said affidavit was signed by him. It is submitted that, the custodial interrogation of the Applicant is necessary. The cell phone of the Applicant is required to be seized. Statement of the witnesses were recorded under Section 164 of the Code of Criminal Procedure.

6 Learned counsel for the Applicant relied upon the statement of the Applicant dated 13th December 2019 recorded by Kagal Police Station and contended that the Applicant has been falsely implicated in this case. He also contended that, the complaint was addressed by wife of the Applicant to Kagal Police Station stating that, the victim has been forcing the Applicant by making false complaint to marry him. Her parents have also joined her. All of them had threatened that, they will cause harm to reputation. The brother of the victim had forcibly taken the motorcycle and the mobile phone of the Applicant. Hence, his mobile phone is in custody of victim's brother. Learned APP however, contended that being the persons from Police Department, the Applicant and his wife had created false claims on the handing over the cell phone to the brother of victim. They had trying to suppress the vital information necessary for investigation. It is pertinent to note that, the Applicant in the

present application has tried to contend that from overall conduct of the complainant, inference can be drawn that the alleged act of sexual intercourse was consensual and she was a consenting party. She had opportunity to approach the Police to lodge complaint but she enjoyed his company. It is relevant to note in pursuant to previous complaint lodged by complainant on 06th December 2019, the statement of the Applicant was recorded on 13th December 2019. It is produced by learned Advocate for the Applicant. In the said statement it is stated that, the Applicant and the victim were good friends. It was one sided love affair from the complainant. She was forcing him to accompany her and she used to forcibly click the photographs with the Applicant. She used to threaten that the photographs will be shown to others and he should marry her by leaving his wife. It is also stated that, the victim and her brother had taken his mobile phone. It is also stated that he had consumed the insecticide by mistake. The version of the Applicant in the said statement is contrary to the record and his assertion in this application. The version also does not appear to be natural. The investigation reveals that on 14th October 2019 the Applicant had purchased the Stamp Paper through the witness and obtained

signature of the complainant. The investigation also reveals that the Applicant had performed marriage with his wife Minakshi Methe. This version of the Applicant is fortified by evidence. The Applicant has suppressed the fact that, he is married person. The Applicant gave false promises that he would marry victim and subjected her to sexual assault. He had taken contradictory stand which reflects his mala fide intention. It is also apparent that, he do not want to co-operate with investigation. He had tried to make false defense in advance that his mobile phone is with complainant. In spite of marriage, Applicant asserted that he is unmarried. In the previous statement before police recorded during inquiry of previous complaint he stated that, he had consumed insecticide under mistake. He had purchased stamp paper for executing writing. The fact that he is married was disclosed by his uncle. The contradictory assertions of the Applicant are sufficient to draw adverse inference. Hence, no case for grant of anticipatory bail is made out.

ORDER

Criminal Anticipatory Bail Application No.474 of 2020 is rejected.

(PRAKASH D. NAIK, J.)