

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

ANTICIPATORY BAIL APPLICATION NO. 876 OF 2020

Rajesh Govindbhai Patel

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Niranjan Mundargi a/w. Mr. Yogesh Israni a/w. Mr. Vikram
Sutaria for Applicant.

Mr. Amit A. Palkar, APP for the State/Respondent

CORAM :SARANG V. KOTWAL, J.

DATE :15th DECEMBER, 2020

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No. 162 of 2020 registered at Tilak Nagar Police Station dated 30th May, 2020 under sections 376, 376(2) (n), 420, 323, 504, 506 of the Indian Penal Code.

2. Heard Mr. Niranjan Mundargi, learned counsel for the Applicant and Mr.Amit Palkar, learned APP for the State.

3. On 14th October, 2020, Shri Sanjog Parab, learned

Senior Counsel had appeared for the Intervenor. On the last occasion, i.e. on 3rd December, 2020, nobody appeared for the Intervenor and even today, nobody appeared for the Intervenor.

4. The FIR is lodged by the prosecutrix herself, who was 26 years of age at the time of lodging of the FIR. In the FIR, she has stated that she got acquainted with the Applicant in the year 2018. Their friendship turned into a love affair. It is her case that the Applicant promised to marry her. In December, 2019, the prosecutrix expressed her desire to start a business at Mumbai and Surat. At that time, the Applicant suggested to her that they could start a business with his friends Hitesh Bangari and Prateek Shah from Mumbai. They decided to take over the two companies viz. Sword Edge Commercial and Organic Pvt. Ltd. and Kepek Pharm Pvt. Ltd. Hitesh was to provide the office and furniture and Prateek was to bring business. The prosecutrix and the applicant were to contribute Rs.70 lakhs each. An agreement was executed. Those companies were taken over on 10th January, 2020. On 20th January, 2020, the prosecutrix came to Mumbai with the Applicant. The prosecutrix started residing in an empty flat owned

by Hitesh. The Applicant was already staying with Hitesh and Hitesh's family. However, the Applicant felt awkward and requested the prosecutrix to permit him to reside in the same flat where she was staying. It is her case that since the Applicant had promised to marry her, she allowed him to stay with her. It is a specific case in the FIR that since 26th January, 2020, they established physical relations. She has further alleged that she had spent Rs.43 lakhs for the business, but the Applicant did not contribute anything. The shares were taken by other partners except the Applicant. It is further alleged that the Applicant requested for hand loan of Rs.30 lakhs. On 11th April, 2020, the prosecutrix told the Applicant that unless he married her, she would not help him financially. Quarrel took place between them and allegedly the Applicant beat her. It is her case that thereafter, she suspected Applicant's character as he started avoiding her. On further inquiry, she came to know that the Applicant was already married in the year 2008 itself and had a daughter from that marriage. It is her case that thereafter, relations between the prosecutrix and the Applicant became strained. The Applicant

used to threaten and beat her. On the basis of these allegations, the FIR is lodged.

5. Mr. Niranjan Mundargi, learned counsel for the Applicant invited my attention to Whatsapp chats between the Applicant and the First Informant. It is annexed at page 209 to this application. These chats show that on 27th March, 2020 itself there was a reference to the Applicant's wife and daughter. He submitted that the Applicant himself has lodged his FIR against Hitesh and the prosecutrix on 24th August, 2020 at Kamrej Police Station, Surat for commission of offences punishable under sections 406, 420, 120B, 506(2), 389 of IPC. The subject matter of that FIR is amount of more than Rs.9 Crores, which was taken from the Applicant by Hitesh and the prosecutrix on the pretext of starting a business. The money was not returned. Mr. Mundargi, invited my attention to the bank statement, which shows that there was transfer of money in favour of Hitesh in March, 2020, which supports the Applicant's case in that FIR.

6. Learned APP produced the papers of investigation before me and, in particular, he showed me the supplementary

statement of the prosecutrix recorded on 15th June, 2020. The case of the prosecutrix in that statement is quite different from her FIR. In her supplementary statement, the prosecutrix had stated that they had their first physical relation in July, 2018. After that she checked the Applicant's Instagram account and she came to know that he was married and that he had a daughter from that marriage. It is her case that the Applicant told her that he was planning to divorce his wife and then would marry the prosecutrix. It is her case that in March, 2019 she got pregnant. The Applicant took her to a clinic in Surat where she was given medicines. Her pregnancy was aborted because of the medicines. She has described their business relations. Mr. Palkar, learned APP, therefore, submitted that the allegations are also in respect of abortion, which prosecutrix had to undergo. He submitted that the offence is serious and the Applicant does not deserve protection of anticipatory bail.

7. I have considered these submissions. The prosecutrix is not consistent in her versions. Her story in the FIR materially differs from the one in her supplementary statement. Her original

story was that she was not aware about the Applicant's existing marriage and daughter. It is falsified by her own supplementary statement and Whatsapp chat attached to this memo of application. The prosecutrix had kept physical relations with the Applicant knowing fully well about his marital status and also knowing that he had a daughter from that marriage. Therefore, the relationship between the prosecutrix and the applicant was a consensual relationship.

8. So far as the allegation about cheating is concerned, that part is also doubtful because the Applicant's bank statement shows that huge amount was transferred by the Applicant to the account of Hitesh. Of course the Applicant's FIR was lodged in August, 2020, but the bank transactions were from the month of March, 2020. As far as the prosecutrix's case about her abortion is concerned, she had willingly gone to the clinic and it is not mentioned in her supplementary statement or the FIR that she was forced to abort this pregnancy.

9. In this view of the matter, the prosecutrix's story does not appear to be truthful. Sufficient doubt is created in favour of

the Applicant. In this situation the Applicant's custodial interrogation is unjustified and he deserves protection of anticipatory bail order.

10. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R. No. 162 of 2020 registered at Tilak Nagar Police Station, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) The applicant shall attend the concerned Police Station as and when called and shall cooperate to the investigating agency.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)