

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

923 ANTICIPATORY BAIL APPLICATION NO. 22 OF 2021

**PRAVIN S/O SHIAVAJI @ GAHININATH KHEDKAR
VERSUS
THE STATE OF MAHARASHTRA**

Advocate for Applicant : Mr. M.L. Wankhade.
APP for Respondent : Mr. V.S. Badakh.

**CORAM : MANGESH S. PATIL, J.
DATED : 28.01.2021**

PER COURT :

This is an application under Section 438 of the Code of Criminal Procedure as the applicant is apprehending his arrest in Crime No. I-6180/2020, registered with Kotwali Police Station, Dist. Ahmednagar, for the offences punishable under Sections 376, 417, 506 of the Indian Penal Code.

2. The FIR has been lodged by a women aged 27 years stating that she got acquainted with the applicant and the relation blossomed into an affair. Both of them used to roam around on her automobile, even went to hotels and stayed over night. It is alleged that during one such stay asserting that some day or the other they would get married that he made her to succumb to lust. It is also alleged that he also snapped her photographs in objectionable conditions and used to transmit it to her on her phone. Lastly it is alleged that later on he

started avoiding her. When she insisted to solemnize marriage, he refused to do that and also threatened that he would not allow her to get married.

3. The learned Advocate for the applicant submits that accepting allegations in the FIR it was a matter of consensual relation. There was no element of cheating. The informant is a grown up lady apparently voluntarily entered in the relationship. Applicant is ready to surrender his mobile phone. Since she was a consenting party, she can be seen willingly offering to have herself photographed. He may be granted anticipatory bail subject to usual terms and conditions.

4. The learned APP opposes the application. He submits that the offence is serious. It is a matter of rape. There are allegations of cheating as well. Even the applicant has threatened to circulate the objectionable photographs. The mobile phone of the applicant is to be recovered and custodial interrogation is necessary.

5. I have carefully gone through the papers. Without intending to influence either the investigation or the trial I cannot but observe that going by the allegations in the FIR, there is a serious doubt about the case being falling under Section 376 of the Indian Penal Code.

6. A careful perusal of the FIR reveals that prosecutrix was having an affair with the applicant. They had stayed in hotels and roamed around on her automobile. In a vague and omnibus manner, she has stated that in one night she succumbed to his lust when he insisted for having the relations by saying that some day or the other she would be his wife.

7. More importantly at no place in the the FIR there is allegation about she having succumbed to the physical relation deceived by the promise made by the applicant to marry.

8. As far as the taking of photographs of the prosecutrix in an objectionable condition is concerned, in spite of specific allegations in the FIR about the applicant having transmitted the photographs to her, the Investigating Officer has not seized her mobile phone to ascertain the fact.

9. Considering all the facts discussed herein above, in my considered view custodial interrogation of the applicant is not necessary and he could be granted anticipatory bail subject to usual terms and conditions which would facilitate the Investigating Officer to complete the Investigation.

10. The application is allowed.

11. In the event of arrest of the applicant, he shall be released on bail on executing Personal Recognizance for an amount of Rs. 25,000/- (Rupees twenty five thousand) and furnishing a solvent surety in the like amount subject to the following conditions :

(a) He shall attend the concerned police station on 01.02.2021 and 05.02.2021 between 11:00 a.m. and 02:00 p.m. and shall cooperate the Investigating Officer.

(b) He shall not tamper the evidence or influence the witnesses.

(MANGESH S. PATIL, J.)