

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

914 ANTICIPATORY BAIL APPLICATION NO. 215 OF 2021

**GAUTAM PRABHAKAR KHILLARE
VERSUS
THE STATE OF MAHARASHTRA**

Advocate for Applicant : Mr. D.M. Shinde.
APP for Respondent : Mrs. G.L. Deshpande.

**CORAM : MANGESH S. PATIL, J.
DATED : 09.04.2021**

PER COURT :

Applicant is seeking anticipatory bail in connection with Crime No. 34/2021 registered with Akhada Balapur Police Station, district Hingoli, for the offence punishable under Section 376 (2) (n) of the Indian Penal Code.

2. The FIR has been lodged by a married women aged 20 years alleging that there was an affair between her and the applicant who is a soldier in the Army. He had kept her promising to solemnize marriage. However, subsequently his relations were not ready to perform marriage between the two. She got married to someone else. After coming back from his place of posting, he again contacted her and induced her to have sexual relations promising to solemnize marriage. Even some sort of ceremony was undergone and taking

advantage of his position, he sexually exploited her under a false promise of marriage. After she was sure that he has clearly backed off from his promise, she lodged the FIR and the offence was registered.

3. The learned Advocate for the applicant would submit that accepting the allegations at their face value, it is clearly a case of consensual relations between the two. She has indulged in sexual relations in spite of the fact that she was already married to someone and had not obtained divorce. He would, further, submit that even the informant lodged a complaint with the police asserting that she is legally wedded wife of the applicant. It is pursuant thereto that the concerned Investigating Officer of Akhada Balapur police station issued a notice under Section 149 of Cr.P.C. dated 19.12.2020 to four persons. All in all, the prosecutrix was a consensual party and there is no question of any rape. The applicant has already been protected by way of ad interim relief and the protection may be confirmed.

3. Learned APP opposes the application. She submits that under a false promise to solemnize marriage the applicant has sexually exploited her. The relation cannot be said to be consensual. In her statement under Section 164 of the Cr.P.C. also, she has stuck to the

stand. Considering the serious nature of the allegations, applicant's custodial interrogation is necessary. The application be rejected.

4. I have carefully gone through the papers. Without intending to comment upon the veracity or otherwise of the grievance being put forth by the prosecutrix, it is sufficient to observe that the contents of the FIR and all other documents reveal that there is enough room to believe that in all probability the informant was maintaining sexual relations with the applicant of her free will.

5. There was an affair between the two which had blossomed, till the time she got married to someone else. In spite of her such marriage being in subsistence, she further states that the applicant continued to sexually exploit her under a false promise of marriage. There is enough material to show that the informant was not naive and was in fact preparing for civil services examination. In spite of such state of affairs she could indulge in adulterous relations and is apparently now seems to be aggrieved by applicant's refusal to perform marriage.

6. There is material to show that the couple had stayed together by pretending husband and wife for couple of months by renting a

premises. She even executed same writing on a stamp paper and pretends to have obtained customary divorce.

7. Considering all the aforementioned facts and circumstances, in my considered view, this is not a case where custodial interrogation of the applicant needs to be resorted to enable the Investigating Officer to recover or discover something.

8. The application is allowed. The interim relief granted earlier by the order dated 03.03.2021 stands confirmed with the same terms and conditions. The observations made herein above are confined to the decision of the present application.

(MANGESH S. PATIL, J.)