

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

ANTICIPATORY BAIL APPLICATION NO. 681 OF 2021

Rohan s/o Rajendra Khajekar,
Age : 28 years, Occu. Service,
R/o. House No. 4/6/12, Ramnagar,
CIDCO, Aurangabad.

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

.....
Mr. B. G. Londhe, Advocate h/f Mr. Kiran Dantal, Advocate for the
applicant

Mr. A. V. Deshmukh, APP for respondent / State

Mr. Rajendra H. Wagh, Advocate for respondent No. 2

.....

CORAM : V. G. BISHT, J.

DATED : 02nd September, 2021

PER COURT : -

1. This is an application under Section 438 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No. 0493 of 2021, registered with M.I.D.C. Waluj Police Station, District Aurangabad, for the offences punishable under Sections 376(1), 406 and 506 of the Indian Penal Code.

2. The prosecution case, in short, is that the informant and the applicant became friends through Facebook before two years from

the date of lodging of FIR. They started meeting each other and decided to get married. Applicant's mother also started talking informant on mobile and advised her that as she is doing job, she should save money so that those money can be used in future after the marriage. Even the applicant's mother told the informant that her sister would help her in taking out RD and also asked informant to send money. Accordingly, informant used to deposit moneys in the saving account of applicant at the rate of Rs. 10,000/- to Rs. 12,000/- per month from the year 2019.

3. The prosecution next contends that on 03.01.2021, all the family members of the applicant saw informant at her uncle's home and decided to perform marriage of applicant and informant on 15.04.2021. The prosecution alleges that on 19.03.2021, the applicant visited the house of the informant and finding her alone in the house, forcibly performed sexual intercourse. It is further alleged that on 25.03.2021, the applicant told the informant that as she is not allowing him to maintain physical relations, he would not marry her.

4. Mr. B. G. Londhe, learned Counsel for the applicant, submits that first of all there is delay in lodging the FIR, which is

nowhere explained. Secondly, the ingredients of Section 376 are not attracted inasmuch as the FIR is totally silent as to whether any resistance was offered to the alleged sexual assault at the hands of the applicant. Moreover, the material placed on record does not indicate the necessity of the physical custody of the applicant.

5. Mr. A. V. Deshmukh, learned APP, on the other hand, opposed the submissions by contending that not only the informant was induced to part with moneys but the applicant forcibly performed the sexual intercourse against the will of the informant.

6. Mr. Rajendra Wagh, learned Counsel for respondent no. 2 – Victim, also opposed the submissions by submitting that the informant's statement u/s 164 Cr.P.C. was recorded by the concerned Judicial Magistrate First Class, wherein the informant has supported the contents of FIR. Having regard to the nature of the offence, the custody of the applicant is necessary and, therefore, the present application deserves to be rejected.

7. At the very outset, the material fact is that the applicant allegedly refused to marry the informant on 25.03.2021 whereas, the

FIR came to be lodged on 02.05.2021 i.e. after a period of more than 45 days, without there being any explanation to that effect.

8. From the investigation papers, it appears that on 18.04.2021 the informant herein had lodged the N.C. against the applicant and his brother alleging therein that when she demanded the hand loan amount from the applicant, the applicant and his brother abused and beat her by means of fist blows. It is quite pertinent to note that this N.C. came to be filed on 18.04.2021 whereas the FIR came to be lodged after a period of more than 20 days i.e. 12.05.2021. What is surprising is that while lodging the N.C. the informant nowhere alleged the incident of sexual assault or refusal by applicant to marry on the ground that she was not allowing him to maintain physical relations.

9. Taking over all view of the matter, I am of the considered view that the prosecution has not produced any material on record to find out the necessity of the custodial interrogation of the applicant. In such circumstances, I do not feel, as is claimed by the prosecution, that the custody of the applicant is necessary for the purpose of investigation.

10. For the aforesaid reasons, I am inclined to allow the application. Hence, following order.

ORDER

- i] The application is allowed.
- ii] The interim relief granted by this Court on 14.07.2021 is confirmed and made absolute.

[V. G. BISHT]
JUDGE