

ANTICIPATORY BAIL APPLICATION NO.707 OF 2021

VERSUS

THE STATE OF MAHARASHTRA ...RESPONDENT

Advocates for the Applicant : Mr. S. A. Deshmukh and
Mr. M. M. Barot
APP for the Respondent – State : Mrs. V. S. Choudhari
Advocate for informant to assist APP : Mr. V. P. Raje

CORAM : V. G. BISHT, J.

DATE : 8th 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.0135/2021, registered with Tuljapur Police Station, District Osmanabad for the offences punishable under Sections 376(2)(n) and 377 of the Indian Penal Code, 1860.

2. It is the case of prosecution that the informant is a married woman having a major girl aged 20 years and a son aged 15 years. All were residing separately from her husband. She came in contact with the applicant and voluntarily started

residing with him. The applicant had also expressed his desire to marry her. Thus they also started having physical relations. It is alleged that the applicant also used to take moneys from her and ultimately refused to marry her. She accordingly lodged the report.

3. Mr. S. A. Deshmukh, learned counsel for the applicant, submits that the physical relations between the applicant and the informant was consensual. At no point of time any promise was made by the applicant to marry her. In such circumstances, there are no ingredients of the alleged offences. Even otherwise having regard to the nature of offences the question of custodial interrogation does not arise.

4. Ms. V. S. Choudhari, learned APP for the Respondent - State, on the other hand, opposed the submissions by contending that the applicant had given the false promise of marriage and under that pretext not only maintained physical relations but also extracted moneys from the informant. The investigation is in progress. There being no merit in the application, the same is liable to be rejected.

5. A bare reading of the F.I.R. would show that the informant is not only a grown up lady but is also a mother of a major

daughter and son of 15 years old. It further appears that she on her own maintained physical relations and also had given moneys to applicant. *Prima- facie* the alleged sexual relation was consensual between them. It is nowhere specifically alleged that her consent was obtained by practicing deception or was vitiated by misconception of fact arising out of a promise to marry. Being a grown up lady and having two children she was well aware of the consequences of her relations with the applicant.

6. Assuming for the sake of argument that her consent was vitiated by misconception of fact arising out of a false promise to marry, even then it is not a case of that kind where custodial interrogation is necessary.

7. For the aforesaid reasons, I am inclined to allow the application. Hence the following order :-

ORDER

- (1) The Application is allowed.
- (2) Interim protection granted by this Court on 08.07.2021 is confirmed and made absolute.
- (3) Application is accordingly disposed off.

**(V. G. BISHT)
JUDGE**