

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

ANTICIPATORY BAIL APPLICATION NO.929 OF 2020

AMOL TULASHIRAM KHAIRE
VERSUS
STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Gundecha Vijay R.
APP for Respondent/State: Mr. P.G. Borade

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CORAM : MANGESH S. PATIL, J.

DATE : 09.02.2021

PER COURT :

This is an application under Section 438 of the Code of Criminal Procedure as the applicant is apprehending his arrest in connection with Crime No.02/2020 registered with Osmanabad City Police Station, for the offence punishable under Sections 376, 493 read with Section 34 of the Indian Penal Code.

2. The FIR has been lodged by a lady aged 29 years and serving as a teacher in a high school at Osmanabad. In fact, the FIR itself has been lodged after she filed an application seeking a direction under Section 156(3) of the Code of Criminal Procedure.

3. She alleges that she got acquainted with the applicant through a matrimonial website. He kept on promising to marry her and taking advantage of the situation sexually exploited her. There are allegations that even he did not disclose that he was already married. It is alleged that she accidentally came to know about his being a married person when her

phone was picked up by his wife. Having realized that she has been cheated and sexually exploited she lodged the FIR.

4. The learned advocate for the applicant submits that accepting the allegations at their face value, it could be a consensual relation. In fact even the informant is already married and there was no question of her solemnizing the second marriage while the earlier marriage was subsisting. He would point out a copy of the complaint filed by her with the Mangalvedha Police Station dated 10.11.2016 against her brother-in-law, sister-in-law and other relatives of the husband. He would also point out that subsequently even her statement was recorded by the Mangalvedha Police Station on 22.07.2017 wherein she stated about the dispute having amicably settled between her and her husband. The learned advocate would further submit that even before filing of the FIR the applicant has received few messages from her wherein even she had confessed about having cheated him. He would further point out that there are messages wherein she even demanded money to settle the things.

5. The learned advocate would further submit that the applicant has already undergone medical examination having been called upon by the Investigating Officer. Consequently his custodial interrogation is not necessary. He is ready to cooperate the Investigating Officer even hereafter and may be granted anticipatory bail.

6. The learned APP strongly opposes the Application. He submits that the offence is serious. The applicant has sexually exploited the

informant by giving a false promise to marry even when he was incapable of marrying with her as his earlier marriage was subsisting. Her statement has been recorded under Section 164 of the Code of Criminal Procedure wherein she has reiterated her allegations. Even the statements of witnesses have been recorded which corroborate her version. Applicant's custodial interrogation is imperative. The application be rejected.

7. I have carefully gone through the papers. Without intending to indulged into scanning the veracity or otherwise of the contents of the FIR it would be sufficient to observe that it is not that the applicant alone seems to be married one. Even the prosecutrix seems to be married woman. There are copies of the compliant filed by her against her husband and his relatives and further her statement recorded by the Police settling that dispute.

8. Again going by the text messages sent by her to the applicant, in one such message she has confessed about having cheated him. There are few messages *prima facie* showing that even she demanded ransom for settling the dispute.

9. Coupled with the aforementioned facts and circumstances it is also pertinent to note that the alleged relation is stated to have commenced in the year 2017 but the FIR has been filed in the year 2020 and it is during the intervening period these messages were exchanged.

10. Admittedly, the applicant was called upon and has undergone medical examination as well.

11. Considering all the aforementioned facts and circumstances, the

application deserves to be allowed.

12. The application is allowed. In the event of arrest of the applicant in connection with Crime No.02/2020 registered with Osmanabad City Police Station, for the offence punishable under Sections 376, 493 read with Section 34 of the Indian Penal Code he be released on bail on his executing personal recognizance for an amount of Rs.20,000/- and furnishing a solvent surety in the like amount subject to following conditions:

- a) He shall attend the concerned police station as and when called by the Investigating Officer till filing of the charge sheet.
- b) He shall not tamper the evidence or influence the witnesses.

(MANGESH S. PATIL, J.)

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