

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1507 OF 2020

VIJAY VISHWANATH NAGRE
VERSUS
THE STATE OF MAHARASHTRA

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Mr. Menezes Joslyn A., Advocate h/f Mr. P.S. Paranjape, Advocate for
applicant

Mr. S.Y. Mahajan, APP for respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 29th JANUARY, 2021.

ORDER :

1 Present applicant has been arrested, in connection with Crime No.553/2020 dated 11.09.2020 registered with Nanalpeth Police Station, Dist. Parbhani, for the offence punishable under Section 376(2)(n) of The Indian Penal Code, 1860. The applicant is seeking bail under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. Menezes Joslyn A. holding for learned Advocate Mr. P.S. Paranjape for the applicant and learned APP Mr. S.Y. Mahajan for respondent.

3 It has been vehemently submitted on behalf of the applicant that the prosecutrix is a lady of 24 years and was married in 2011. She has two sons aged 7 and 5 respectively. It is her case that since her husband was not taking proper care of herself and children, she was residing separately from husband with two children. She states that she met with applicant about one and half years ago and there was love relationship between them. By passage of time the applicant was well aware about the husband and children of the prosecutrix. However, under the promise of marriage it is stated that he has kept sexual relationship with her. It is stated that she became pregnant from the applicant in August, 2020 and when she asked applicant about marriage, at that time, he told that he will not marry. It is stated that thereafter also on 09.09.2020 at about 2.30 p.m. the applicant had visited her room and had kept forcible relationship. It is submitted on behalf of the applicant that the physical relationship between the prosecutrix and applicant was out of love and as it was consensual sex, it cannot be stated that it amounts to an offence under Section 376 of the Indian Penal Code. In spite of the fact that the prosecutrix was married and had two children; yet, without taking divorce from her husband she has kept physical relationship with the applicant, and therefore, it demonstrates her willful act. After separating from her husband she was staying in the house of one Lila Sharma, by taking a room on rent. However, she took another room on rent and she used to

meet applicant in that room. The act, on the part of prosecutrix, to take additional room on rent, would also shows her willingness to continue the relationship. It has been submitted on behalf of the applicant that the prosecutrix has criminal antecedents. She was behind the bars on the allegations of involving herself in offence under Section 362, 363, 365, 366, 420, 506 read with Section 34 of the Indian Penal Code. Offence vide Crime No.76/2020 was registered against her with Kotwali Police Station. She has been released by Court in Bail Application No.431/2020. There is no question of cheating the prosecutrix by the present applicant, when the acts were done by consent by both of them.

4 It has been also submitted on behalf of the applicant that the prosecutrix has tried to influence and prejudice the learned Sessions Judge, Parbhani, who was deciding the bail application. The father of the present applicant is a Doctor by profession and she has made allegations against the father of the applicant as well as Public Prosecutor in her complaint letter dated 28.10.2020. It is alleged that she was given threat to abort the child in the womb and she was taken to the house of Public Prosecutor where the Public Prosecutor had also threatened her with dire consequences and she has made request to change the Public Prosecutor in her matter bearing Sessions Trial No.68/2020. When the acts were done by her voluntarily, now,

she wants to see the applicant behind the bars, for no reason at all, and therefore, she is indulging herself in such acts. Learned Advocate for the applicant, therefore, prayed for release of the applicant on bail.

5 Learned APP strongly opposed the application and submitted that though the investigation is over and charge sheet has been filed vide Regular Criminal Case No.623/2020 before learned Judicial Magistrate First Class, Parbhani (Court No.1), yet, the evidence, that has been, collected would show that though the prosecutrix is major, married and had two children, yet, since beginning, with an intention to cheat her and by giving false promise to marry, the applicant has solicited the physical relationship. He kept on giving promises, though he had no desire to fulfill, and therefore, it cannot be stated that it was consensual act. The consent was obtained by fraud or cheating. Now, the prosecutrix is pregnant from the applicant. DNA samples have been taken. The applicant is not denying that he would be the father of the child, and therefore, he has no right to be released on bail.

6 At the outset, it is to be noted that now the investigation is over and even the charge sheet is filed, therefore, the further physical custody of the present applicant is not required for the purpose of investigation. The prosecutrix is major, married and mother of two children, therefore, the conditions to look at the case would be different. In her FIR itself she has

stated that after she got acquainted with the applicant they developed friendship and thereafter the friendship turned into love affair. She states that time and again, the applicant used to meet and express love for her and he had promised that he would help her in taking divorce from her husband. It is stated that she had handed over the custody of both the children to her husband. It is stated by her that the present applicant gave her room on rent from 01.01.2020 at Parbhani. In that place they had the sexual relationship and it appears that it continued till July, 2020 and thereafter since July, 2020 she states that applicant started residing with her in that room. Thereafter she became pregnant in August, 2020. Important point to be noted is that present applicant appears to be an accused in Crime No.76/2020, registered with Kotwali Police Station, Dist. Parbhani. She was taken in custody by police and she had made application under Section 439 of Cr.P.C. before the learned Additional Sessions Judge. Her application came to be rejected on 16.05.2020. Thereafter, this Court had granted bail to her on 13.07.2020. The copies of both the orders have been produced on record. But it could not be gathered, when the present informant was arrested. The fact remains that for certain period, which has been covered under the FIR in present case, the informant was in jail.

7 The present applicant is not denying his relationship with the

prosecutrix, as it appears and according to him, the relationship was consensual. The contents of the FIR appeared to be so. Though now, the informant appears to be interested in contending that under the promise to marry, the applicant has kept physical relationship with her, he had sufficient maturity. She is married and mother of two children; yet, before giving divorce to her husband, she states that she believed in the words of the applicant. Statements of witnesses, specially the landlord and landlady, would show that they had asked the informant, as to who is the man, who comes and stays with her, thereupon she had disclosed to them that he is the applicant and he had promised her that he would perform marriage with her. Except this part of the statement, there is nothing with them. Taking into consideration the entire facts, period covered and the fact that the prosecutrix herself had made arrangements to have two rooms from the same landlord taken on rent, show the intention, and therefore, the applicant need not be kept behind the bars, waiting for his trial. Hence, the application deserves to be allowed. Accordingly, it is allowed, as follows.

ORDER

1 Application stands allowed.

2 Applicant Vijay Vishwanath Nagre, who has been arrested, in

connection with Crime No.553/2020 dated 11.09.2020 registered with Nanalpeth Police Station, Dist. Parbhani, for the offence punishable under Section 376(2)(n) of The Indian Penal Code, 1860, be released on P.R. of Rs.30,000/- (Rupees Thirty Thousand only) with two solvent sureties of Rs.15,000/- (Rupees Twenty Five Thousand).

3 The applicant shall not tamper with the evidence of the prosecution, in any manner.

4 He shall not indulge in any criminal activity.

5 If he commits any breach of above terms of bail, the prosecution is at liberty to move the Trial Court under Section 439(2) of the Code of Criminal Procedure for cancellation of bail.

6 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

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