

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

914 ANTICIPATORY BAIL APPLICATION NO.1350 OF 2021

SAMPAT LAXMAN MALLAD
VERSUS
THE STATE OF MAHARASHTRA

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Mr. C.V. Dharurkar, Advocates for the applicant.
Mr. S.B. Narwade, A.P.P. for respondent – State.

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CORAM : **PRAKASH D. NAIK, J.**

DATE : 18-11-2021

ORDER :

1. The applicant is apprehending arrest in Crime No.653/2021 registered with M.I.D.C. Jalgaon Police Station for the offences punishable under Sections 376 and 506 of the Indian Penal Code. The First Information Report (for short, "F.I.R.") was registered on 27.09.2021.

2. The allegations in the F.I.R. in nutshell are as follows :

The complainant is aged about 28 years. She was working as a Lecturer in Aastha Nursing College, Osmanabad. She got acquainted with the applicant. They developed friendship. The applicant had promised her that he would marry her and under the promise of marriage she was induced to have physical relationship. Such incident had occurred repeatedly. She was called in the room premises by the applicant and established sexual relations with her.

In 2018 she was taken to a lodge and under promise of marriage the applicant had sexual relationship with her. She had conceived in 2019. Complainant insisted for marriage, however, the applicant refused to perform the marriage. She was taken to the hospital and the pregnancy was terminated. The accused took amount of Rs. 35,000/- and Rs. 70,000/- from her. Complainant learnt that in March 2020 the applicant had performed marriage with another lady. He used to make video calls to the complainant and was insisting that she should meet him. In September 2020 the accused had threatened her that she would kill her if she performs marriage with another person and had forceful sexual relationship with her. She was threatened repeatedly. On 6th September 2021, the victim was taken to a room premises and accused had sexual relationship with her. Hence, the F.I.R. was registered against the applicant.

3. Learned Counsel for the applicant submitted that the applicant and the complainant were acquainted with each other. There was consensual relationship. From the tenor of the F.I.R. itself it is evident that by consent there was physical relationship between the complainant and applicant. On account of different caste, the marriage could not be performed. Both the parties have decided to part with. The complainant had also decided to marry somebody else and accordingly for some reason, the marriage could not be performed. The applicant performed marriage with another lady. The complainant continued to harass the applicant. Reliance is placed on the photographs, whats app messages, conversation

between both the parties and whats app letter forwarded by the complainant to the applicant. It is also contended that the applicant had made endeavour to see that the dispute between both the parties can be resolved by mediating with the mother and brother of the complainant. Custodial interrogation of the applicant is not necessary.

4. Learned A.P.P. submitted that the physical relationship was established with the complainant under false promise of marriage. Consent was obtained by false promise of marriage. Although the accused had physical relationship with the complainant on several occasions, he refused to perform marriage with her. The complainant was also induced to part with the amount. Although the applicant had performed marriage with some other lady, he was insisting that the complainant should maintain relationship with him. The cell phone of the applicant is required to be recovered. Investigation is in progress. There are independent witnesses who support the version of the complainant. Statement of the victim has been recorded under Section 164 of the Code of Criminal Procedure, which supports the prosecution case. In these circumstances, the application may be rejected.

5. On perusal of the F.I.R. and other documents on record, it is apparent that the applicant and victim were acquainted with each other since 2016. The complainant has alleged that on several occasions and at several places there was physical relationship

between the complainant and applicant. The grievance of the complainant appears to be that the promise of marriage was false and under the pretext of performing marriage she was induced to have physical relationship. The F.I.R. itself indicates that there was physical relationship on several occasions. It is alleged that even after applicant had performed marriage there was sexual relationship between them. From the documents on record it is apparent that the relationship was of consensual nature. The complainant is a major lady.

6. In the light of the factual matrix of this case, the investigation can proceed without subjecting the applicant to custodial interrogation. Hence, the following order.

ORDER

- (i) ABA No. 1350 of 2021 is allowed.
- (ii) In the event of arrest of the applicant in Crime No.653/2021 registered with M.I.D.C. Jalgaon Police Station, the applicant be released on bail on executing P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount.
- (iii) The applicant shall appear before the Investigating Officer on 24.11.2021, 25.11.2021 and 26.11.2021 between 11.00 a.m. and 1.00 p.m. and thereafter as and when called for, till filing of the charge-sheet.
- (iv) The applicant shall hand over his cell phone to the Investigating Officer for the purpose of investigation and he shall cooperate with the investigation.

- (v) The applicant shall not tamper with the evidence and he shall not approach the victim in any manner.
- (vi) The application stands disposed of.

(PRAKASH D. NAIK, J.)

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