

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 24 OF 2021

Khalid Umar Mohammad Haneef Applicant

Versus

The State of Maharashtra and Anr. Respondents

Mr. Mahendra N. Sandhyanshiv, for the applicant.

Mr. Ajay Patil, APP for the State/Respondent.

Mr. N.R. Bubna, for Respondent No.2.

**CORAM: SARANG V. KOTWAL, J.
DATE : 16th FEBRUARY 2021**

P.C. :

1. The Applicant is seeking Anticipatory Bail in connection with C.R. No. 460 of 2020, registered at Killa Police Station, Malegaon under Sections 376, 377, 504 and 506 of the Indian Penal Code.

2. The FIR is registered on the basis of the order passed by the learned JMFC under Sections 156(3) of Cr.P.C. on the complaint made by the prosecutrix. The complaint was made under sections 376, 377, 504, 506 of the Indian Penal Code. She has stated in her complaint

that she was earlier married with the applicant. The applicant had divorced the informant on 08/11/2018. Since then the informant was staying separately with their 5 year old daughter. In spite of this divorce, the applicant continued visiting the informant's house. He continued sending obscene messages on her social networking account. On some occasions he demanded to have sexual intercourse but the informant had refused. On 30/11/2020, the applicant went to her house, he abused her and at the point of knife committed rape on her. There are allegations of commission of offence involving unnatural sex. He threatened her and then left the place. The informant tried to give complaint to the police station but the officers of Killa Police Station, Malegaon did not record her FIR. Therefore she filed her private complaint.

3. Learned Counsel for the applicant submitted that the informant was in a habit of filing malicious proceedings against the applicant and his family. In the past she had filed proceedings under Sec. 125 of Cr.P.C.

as well as those under the provisions of Protection of Women from Domestic Violence Act. He submitted that both these proceedings were settled in Lok-Nayalaya. Subsequently also she had filed one more complaint under Domestic Violence Act. In this background, the allegations in the FIR will have to be seen. The applicant had merely gone to the house of the informant to celebrate the birthday of their daughter. He further submitted that taking advantage of his visit to her house, she has made these false allegations. He submitted that the applicant has co-operated with the investigation and therefore his custodial interrogation is not necessary.

4. Shri Ajay Patil, learned APP submitted that there are statements of neighbours who had seen the applicant going to the house of the informant on that particular date. The offence is serious.

5. Learned Counsel for the intervenor submitted that stand taken by the applicant shows that it is his case that it was consensual sex. This conduct of the applicant

shows that inspite of the divorce he wanted to have physical relations with the informant. He submitted that looking at the past between the parties and also taking into account the previous and pending litigations, it was improbable that the informant would have consented to such relations. He submitted that considering the gravity of the offence, applicant does not deserve any protection.

6. I have considered these submissions. Some facts are admitted. It is admitted that the applicant and the informant were earlier married. Subsequently in November 2018, the aplicant had divorced the informant. Even thereafter, he continued visiting the house of the informant. In between there were other proceedings initiated by the informant. On one occasion they were settled but again she filed complaint under Domestic Violence Act which is still pending. It shows that relations between them were not cordial at all.

7. In this view of the matter, it is difficult to accept theory of consensual physical relations. Statements given

by neighbours show that the applicant had indeed visited the house of the informant on that particular day. Thus there is some corroboration to the informant's case. In this view of the matter, since the offence is serious and the allegations are serious, protection of anticipatory bail cannot be granted to the applicant. Therefore, I am not inclined to protect him. The application is therefore rejected.

8. At this stage, learned Counsel for the applicant submitted his elder son is getting married on 24/02/2021. The applicant was earlier protected by an interim order dated 12/1/2021. He, therefore, prays that the protection may be extended till after the wedding of his son. Considering this submission, Interim protection granted to the applicant vide order dated 12/01/2021 is extended upto 26/02/2021.

9. The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)