

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

ANTICIPATORY BAIL APPLICATION NO.50 OF 2021

Asad Farhan Jamadar	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Mahesh Vishwakarma, Advocate for the Applicant.
Smt. J.S. Lohokare, APP for the Respondent-State.
PSI R.T. Suryawanshi, Mhasala Police Station is present.

CORAM : SARANG V. KOTWAL, J.
DATE : 15th JANUARY, 2021

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.52/2020 dated 14.10.2020 registered at Mhasala Police Station, District-Raigad under Sections 376, 507 of the Indian Penal Code and under Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012.

2. The FIR is lodged by the prosecutrix herself. She has stated that in July, 2017, she came in contact with the present Applicant through a social networking site. They started chatting on the internet. They became friends and

their friendship turned into love affair. It is further mentioned in the FIR that in March, 2018, they met for the first time. In April, 2018, they went for an outing and they had their first sexual intercourse at a secluded spot near DiveAgar Beach. The prosecutrix came to Pune for further education. Similarly the Applicant also went to Pune for further education. The prosecutrix was staying in a girls hostel. They started meeting again. It is alleged in the FIR that the Applicant used to threaten her that if she did not meet him, he would cause harm to himself. Therefore, the prosecutrix used to meet him. The FIR further mentions one occasion where they had their sexual intercourse in a lodge. It is further alleged that since April, 2020 the Applicant went to his native place and started avoiding her. He used to call her and abuse her and, therefore, this FIR is lodged.

3. Heard Shri Mahesh Vishwakarma, learned Counsel for the Applicant and Smt. J.S. Lohokare, learned APP for the State.

Submissions :

4. Learned Counsel for the Applicant submitted that the FIR itself shows that it was a consensual relationship. The Applicant is a young boy of 21 years of age. He submitted that the Applicant never had intention to give a false promise. In fact both the families were knowing about their relationship and on one occasion the families had met at the police station and had decided to part ways.

5. He submitted that though there is allegation that on one occasion the physical relation was established when she had not completed 18 years of age, but, this is just an afterthought to give this offence a serious colour. He submitted that taking into account the consensual nature of their relationship, the Applicant needs to be protected by an order of anticipatory bail.

6. Learned A.P.P, on the other hand, opposed this Application. She submitted that the victim gave consent only because the Applicant had promised to marry her. And,

therefore, that consent is vitiated. She submitted that now the charge-sheet is already filed. She submitted that considering the serious nature of allegations, the Applicant does not deserve the protection of anticipatory bail.

Reasons :

7. I have considered all these submissions. The FIR itself shows that it was a consensual relationship. The allegations are that they developed relationship before she turned 18 years and then it continued after she became an adult.

8. The question would be whether the promise to marry, made by the present Applicant, was made with a dishonest motive or it was a genuine promise. In this particular case it appears that the families of the victim and the Applicant were involved. This affair was known to both the families. This indicates that the Applicant did not establish this relationship clandestinely or surreptitiously. There is some substance in the submission of learned Counsel for the Applicant that on this basis it can be inferred that the promise

was made with genuine intentions. Because of resistance of both the families, the marriage could not take place, but, that did not mean that the Applicant's intentions were not honest right from the inception.

9. In this particular case, considering the involvement of the families, learned Counsel's submission has some force. Importantly, in this matter the charge-sheet is already filed though the Applicant was not arrested.

10. The charge-sheet contains the statements of employees of two lodges. There are entries in the registers of these lodges. The prosecutrix had willingly accompanied the Applicant at these places and the dates of these entries are beyond the period after she became an adult.

11. The Applicant himself is a young boy of 21 years of age. The charge-sheet is already filed. His custody for the investigation purpose is not required.

12. These observations are made only for the purpose of deciding this application. The trial Court, at the proper

stage, shall not be influenced by any of the observations. The Applicant has sufficiently made out case for his release on anticipatory bail. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.52/2020 registered with Mhasala Police Station, District-Raigad, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (iii) Anticipatory Bail Application stands disposed of accordingly.

Pradeepkumar
P. Deshmane

Digitally signed
by Pradeepkumar
P. Deshmane
Date: 2021.01.16
17:08:36 +0530

(SARANG V. KOTWAL, J.)

Deshmane (PS)