

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

ANTICIPATORY BAIL APPLICATION NO. 168 OF 2021

Shadab Rahim Khan Applicant
Versus
The State of Maharashtra Respondent

**WITH
INTERIM APPLICATION NO. 233 OF 2021**

Muskan Dilip Sharma Intervenor

In the matter of:

Shadab Rahim Khan Applicant
Versus
The State of Maharashtra Respondent

Ms. Sana Raees Khan i/b. Ali Kaashif Khan Deshmukh for
Applicant.

Mr. S. S. Pednekar, APP for State/Respondent.

Ms. Anjali Patil, for Intervenor.

CORAM : SARANG V. KOTWAL, J.
DATE : 07th JULY, 2021
(Through Video Conferencing)

P.C. :

1. The Applicant is seeking anticipatory bail in connection
with C.R.No. 08 of 2021 registered at Nayanagar Police Station, on

03/01/2021, under sections 376(2)(n) and 377 of the Indian Penal Code (for short 'IPC'). Subsequently, sections 3 and 4 of the Protection of Children from Sexual Offences Act (for short 'POCSO Act') are added.

2. Heard Ms. Sana Khan, learned counsel for the applicant, Ms. Anjali Patil, learned counsel for Intervenor/first informant and Shri. Swapnil Pednekar, learned APP for the State.

3. The First Information Report (for short 'F.I.R.') is lodged by the prosecutrix herself. On the day of lodging of F.I.R. i.e. on 03/01/2021, she was 23 years of age. She has stated that, when she was studying in school in the year 2012, she got acquainted with the present applicant. The F.I.R. mentions that, during school days, the applicant proposed to her for marriage. The F.I.R. mentions that the informant had even met the applicant's mother in those days. The F.I.R. mentions that the applicant convinced her that since they were to get married shortly, they should have their physical relations. On this representation, the applicant established physical relations with her. The F.I.R. further mentions that, since March, 2013 onwards

they regularly had their physical relations at various places. According to the informant, on every such occasion, he had established physical relations in spite of her unwillingness. It is alleged that, in February, 2020 and March, 2020 the applicant had unnatural sex with her. Since June 2020, there was no physical relations between the applicant and informant. There are allegations that, she had given some money to the applicant's uncle. In the meantime, both of them were earning money by posting their videos on social media. In August 2020, the applicant told the informant that he did not want to marry her. He wanted to marry another girl. At that time, they had executed a document mentioning their parting of ways. After that, families and friends of both of them tried to bring about reconciliation between them. But there was too much bitterness between them. It is alleged that, the applicant got married with another girl in November 2020. Thereafter, the informant lodged her F.I.R. making allegations that the applicant had established physical relations on the false promise of marriage.

4. Learned counsel for the applicant submitted that, as

per the allegations, their physical relations started in the year 2012 and there is gross delay of about 9 years in lodging the F.I.R., which speaks for itself. According to learned counsel for the applicant, the F.I.R. is lodged as an afterthought after their relationship had gone sour. She submitted that, both parties have executed a document explaining their parting of ways. In that document, there are clear clauses showing that neither of the parties was to have any claim against each other. She submitted that the first informant herself was posting various videos on social media giving contact details of the applicant. This has caused great harassment to the applicant. The applicant has been receiving hate mails and threats because the informant has many followers on social media.

5. Learned counsel for the first informant submitted that, the document executed between the parties was in respect of their business relations. That document cannot be used by the applicant in his favour to defend himself against the allegations of rape made against him by the first informant. She submitted that, in any case, execution of such document has no sanctity in law. She

further submitted that the applicant's advocate has been posting videos making allegations against the informant. This is nothing but interference in the investigation.

6. Learned APP submitted that the allegations pertain to the period when the informant herself was a minor. Therefore, her consent in the physical relationship is not material. The offence under the provisions of POCSO Act is clearly made out. Therefore, the applicant does not deserve protection of anticipatory bail.

7. I have considered these submissions. There is sufficient force in the contention of Shri. Pednekar that, period of offence alleged pertains to the informant's school days when she was a minor. Therefore, as per the allegations, provisions of POCSO Act are attracted. Whether those allegations are true or not would be a matter of trial. It can be conclusively decided only after the evidence is led before the trial court. Today I am only considering the question of grant or refusal of anticipatory bail and in particular necessity of custodial interrogation of the applicant in the background of the facts of this case.

8. The F.I.R. itself mentions that, right from the

beginning, when both of them were in school, the informant was introduced to the applicant's mother. There were preliminary talks of their marriage. Therefore, their relationship goes a long way back in time i.e. to the year 2012. As mentioned earlier, whether during that period they had their physical relations or not is an issue which the trial court can consider. However, their history shows that the promise made by the applicant of getting married with the informant was not a hollow promise, but it was backed by the discussion with the elders in the family. As per the F.I.R., their relationship continued even after the informant attained majority. The physical relations continued till June, 2020. By that time, she was definitely major. Even as per the narration in the F.I.R. their relationship appears to be purely consensual. Subsequently there was some discord between the parties resulting in their breakup.

9. Though, Ms. Patil, learned counsel appearing for the informant has questioned sanctity of the document executed by the parties in August 2020; that document definitely shows intention of and relationship between the parties. The F.I.R. also refers to that particular document and there are no allegations in

the F.I.R. that she was coerced into executing that particular document. The said agreement executed in August, 2020 mentions that, both parties were very unhappy for some past period. There was no emotional compatibility between them and it had become impossible and difficult for them to work with each other. It was mentioned that, their friends and families tried to sort out problems between them but the problems only got aggravated. In paragraph No.6, it was mentioned that due to irreconcilable differences, temperamental differences, irretrievable differences of their relation, they could not continue their business. Thereafter, it was decided that, some amount would be given by the applicant to the informant. Learned counsel for the applicant has stated that, he had abided by the clauses in that agreement. Learned counsel for the applicant relied on the fact that, there is one more clause in the agreement that, neither of the parties would have any claim against each other of any nature whatsoever. She, therefore, submitted that, in spite of this clear clause the informant has gone ahead and has lodged F.I.R. against the applicant.

10. From this discussion, it thus appears that the informant

and the applicant were in close, intimate, emotional and physical relationship, but over a period of time it had deteriorated to such an extent that the informant has lodged this F.I.R. against the applicant making serious allegations. In this background, only looking at their long consensual relationship, I am inclined to grant order of anticipatory bail in favour of the applicant. There are allegations that the applicant forced the informant into having unnatural sex. All these allegations are strictly between the parties. At this stage, it would not be proper to make any comments in respect of those allegations. At this stage, it is more than clear that, both of them were having serious relationship for a long period of time to the knowledge of their families and friends. In this view of the matter, only for the purpose of consideration of relief of anticipatory bail, I am inclined to protect the applicant. It is made clear that, all these observations are strictly restricted to consideration of grant of anticipatory bail. The trial court shall not be influenced by any of these observations while deciding trial. The trial court shall decide the trial in accordance with evidence brought before the court at an appropriate time.

11. There is one more disturbing feature which needs to be taken care of. There are rival allegations of harassment caused by the parties to each other. As far as, harassment caused to the informant is concerned, main allegations are that the applicant's lawyer has posted certain videos, though the matter was under investigation. Obviously, this is highly improper. Learned counsel for the applicant undertakes that the applicant shall not cause any such harassment directly or indirectly. So far as, grievance of the applicant himself is concerned, if he has any cause of action, he can take steps in accordance with law. In this view of the matter, certain conditions are necessary to be imposed on the applicant.

12. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No. 08 of 2021 registered at Nayanagar Police Station, the applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

- (ii) The Applicant shall attend the concerned Police Station once in a fortnight till filing of the charge-sheet and thereafter once in a month for a period of two years from filing of the charge-sheet. In addition, the applicant shall attend the concerned police station as and when called and shall cooperate with the investigation.
- (iii) The applicant shall not leave India without prior permission of the trial court.
- (iv) The applicant shall not cause harassment to the informant, directly or indirectly.
- (v) The applicant shall not interfere with the investigation and shall not tamper with the evidence directly or indirectly.
- (vi) Application stands disposed of accordingly.
- (vii) In view of disposal of anticipatory bail application, the interim application does not survive and it is also disposed of accordingly.

(SARANG V. KOTWAL, J.)