

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

CRIMINAL BAIL APPLICATION NO. 1115 OF 2021

Junaid Akhtar Mohammad Kalim Khan Applicant

Versus

The State of Maharashtra Respondent

Ms. Prabha Badadare for Applicant.

Smt. A. A. Takalkar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 31st MARCH, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 291 of 2020 registered at Kalamboli police station, Navi Mumbai, on 25/12/2020 under sections 376(2)(n) and 417 of the Indian Penal Code (for short 'IPC'). The applicant was arrested on 10/01/2020 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. Heard , learned counsel for the applicant and , learned

APP for the State.

3. The First Information Report (for short 'F.I.R.') is lodged by the prosecutrix herself on 25/12/2020. She has stated that, she was working in a private company as Senior Sales Executive. She was knowing the present applicant since her earlier employment with another company. They were friends. They had gone to watch a movie on 29/10/2019. Thereafter they fell in love. It is her case that, she specifically asked the applicant as to whether he was serious about their relationship and as to whether he intended to marry her. At that time, he had specifically told her that he was committed to marry her. Based on this assurance, the informant started reciprocating. The F.I.R. thereafter goes on to mention different instances from 04/11/2019 onwards in different hotels where they had kept their physical relations. The F.I.R. mentions that, in January, 2020 she became pregnant. She, therefore, took steps for termination of pregnancy. Even thereafter their physical relations continued. In the meantime, lock-down was imposed. The applicant always used to tell her that he was about to tell his family members regarding their marriage. This

went on till 04/12/2020. In the meantime, the informant came to know that the applicant had established love relations with another girl. The applicant refused to marry the informant. The informant realized that she was cheated and the applicant never intended to marry her and, therefore, this F.I.R. was lodged.

4. Learned counsel for the applicant submitted that the narration in the F.I.R. itself shows that it was a consensual relationship and, therefore, no offence of rape is made out. She submitted that the informant willingly had accompanied the applicant to various hotels on different occasions and, therefore, it cannot be said that she was misled by the applicant in keeping physical relations. She submitted that, there was no evidence to show that she had abortion. The doctor has not supported this theory.

5. Learned APP opposed this application. She submitted that the F.I.R. itself mentions that the victim had consented only because the applicant had promised to marry her. Subsequent conduct of the applicant shows that the consent is vitiated. She also invited my attention to the sonography test papers which are

annexed to the charge-sheet to show that the victim had got pregnant. Subsequently the pregnancy was not continued at the instance of the applicant. She submitted that the victim has undergone tremendous mental trauma and, therefore, bail should not be granted to the applicant. The offence is serious.

6. I have considered these submissions. The F.I.R. clearly records that the informant had specifically asked the applicant about his intention to get married with the informant. Only after he had assured the victim that he intended to marry her, the victim went ahead and got in a relationship with him. She had believed him. The applicant did not keep his promise as can be seen from the later developments. The victim had even got pregnant. She had abortion. She did not continue her pregnancy as the applicant had told her that it would cause hurdle in their marriage. In spite of this, the applicant did not own his responsibility and did not keep his words. This conduct of the applicant clearly shows his ill-intentions right from the inception of their friendship. It is thus apparent that the consent was given by the victim on misconception of facts and, therefore, it is vitiated. It is not a

consent in the eyes of law and, therefore, offence under section 376 of IPC is clearly made out against the applicant. In this view of the matter, no leniency can be shown to the applicant and he cannot be granted bail during pendency of the trial.

7. The application is rejected.

(SARANG V. KOTWAL, J.)