

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

ANTICIPATORY BAIL APPLICATION NO. 1016 OF 2021

Nitesh Gopi Paramel

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Suresh Malkani, for the applicant.

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

**CORAM : SARANG V. KOTWAL, J.
DATE : 7th APRIL 2021**

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No. 19 of 2021 registered at Khadakpada Police Station, Thane, on 19/1/2021 under sections 376, 506 read with Section 34 of the Indian Penal Code.

2. Heard Mr. Suresh Malkani, learned counsel for the applicant and Smt. A.A. Takalkar, learned APP for the State.

3. The FIR is lodged by the prosecutrix herself. She has stated that in the year 2016, she got acquainted with the present applicant. Initially she became friends with him. The applicant told her that he was in love with her and that he wanted to marry her. Since he proposed for marriage, she consented. The FIR mentions that their relations were known to the applicant's family. In 2018, the applicant on some false pretext called the prosecutrix to his house. When she went there, she found that the applicant was alone in the house. At that time, on promise of marriage, the applicant established physical relations with her. On the same promise of marriage, he kept physical relations with her between May to June 2018. Subsequently, the informant came to know that the applicant had fixed his marriage with another girl. The prosecutrix went to his house on 10/10/2020 to question him. At that time, family members of the applicant were present in the house. The FIR mentions that the applicant and his father told her that what the applicant had done was only for passing time. They also

told her that she should forget about them. Both of them stated that her character was not good and she should not have any relations with them. She was threatened. After that she came back and told her father about this. On this basis the FIR is lodged.

4. Learned Counsel for the applicant submitted that it was a consensual relationship and the offence of rape is not made out. He submitted that this Court (Coram:-Mrs. Mridula Bhatkar, J.) in Anticipatory Bail Application No. 105 of 2016, had granted anticipatory bail to the accused who had committed similar act on similar promise. He also relied on the Judgment of the Hon'ble Supreme Court in the case of **Sonu @ Subhash Kumar Vs. State of Uttar Pradesh and Anr. passed in Criminal Appeal No. 233 of 2021.** He submitted that considering the consensual relationship, the act of the applicant did not amount to commission of rape and therefore the applicant should be granted protection of anticipatory bail.

5. Learned APP opposed this application. She submitted that the consent obtained by the applicant was vitiated because it was given by the prosecutrix under misconception of the fact. She submitted that the intention of the applicant was never honest right from inception. This can be seen from his conduct. She relied on the Judgment of the Hon'ble Supreme Court passed in **Anurag Soni Vs. State of Chhattisgarh reported in (2019) 3 SCC 1.**

6. I have considered these submissions. The FIR gives details as to how the applicant developed relationship with the prosecutrix. The FIR is clear enough. The informant has stated that she had consented to have relationship only after the applicant had promised to marry her. She believed his words and assurance given by him and only then she gave her consent. She has stated that their relations were known to the applicant's family. In October 2020, when she had questioned the applicant in front of his family members,

the applicant's father had passed humiliating remarks against her. The applicant, instead of supporting her, had humiliated her and had told her that it was merely a casual affair for passing time, as far as he was concerned. The allegations show that the prosecutrix was exploited by the applicant. His conduct shows that his intentions were never honest right from inception. He specifically told the prosecutrix that what he had done with her was just 'time pass'. (words allegedly used by the applicant).

7. Learned Counsel for the applicant has relied on the Order passed by this Court in Anticipatory Bail Application No. 105 of 2016. However, the Hon'ble Supreme Court in various Judgments have laid down the law in such cases. In Anurag Son's case (supra) it is observed that, if the intention of the accused was never to marry, then the prosecutrix's consent is vitiated and the offence of rape is made out. In the facts of that case also family members of the applicant as well as of the prosecutrix were knowing about their relations. The

accused in that case had kept physical relations on the promise of marriage and eventually he had got married to another girl. The Hon'ble Supreme Court, after considering the law laid down in various judgments, reached the conclusion that in such cases offence of rape is made out because the consent was obtained fraudulently and it was obtained on misconception of fact. In that case, Judgment of the Hon'ble Supreme Court in case of Deepak Gulati Vs. State of Haryana as reported in (2013) 7 SCC 675 and other Judgments were considered. The facts in that case are similar to the facts in the present case. Therefore ratio laid down in Anurag Soni's case (supra) is squarely applicable to the present case.

8. As far as Judgment of Sonu @ Subhash Kumar's case (supra) is concerned, in that case the facts were different. In that case the prosecutrix used to converse with the parents and sister of the accused and the parents of the accused were also agreeable to the couple getting married. Subsequently the accused and his

family members were refusing to perform marriage and her sole grievance was that accused in that case was refusing to marry her. In that case it was observed that there were no allegations to the effect that promise to marry given to the prosecutrix was false at the inception. On the contrary there was subsequent refusal on the part of the accused to marry her. In that background, the Hon'ble Supreme Court had observed that in that case no offence was established. However, in the present case, from the FIR it appears that the intentions of the applicant were dishonest right from the inception and it was not a case of subsequent refusal to marry.

9. Ratio of Anurag Soni's case (supra) is applicable to the present case. The offence of rape is made out. The offence being serious, anticipatory bail cannot be granted to the applicant.

The application is rejected.

(SARANG V. KOTWAL, J.)