

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

ANTICIPATORY BAIL APPLICATION NO.724 OF 2021

Mayur Ankush Gaikwad	..Applicant
Versus	
The State of Maharashtra	..Respondent

Mr. Shantanu Adkar i/by Mr. Tapan Thatte, Advocate for the Applicant.

Ms. Rutuja Ambekar, APP for the Respondent – State.

Mr. Chetan Akerkar, Advocate for Respondent No.2.

CORAM : NITIN W. SAMBRE, J.

DATE : 24th NOVEMBER, 2021

PC.

1. Applicant is seeking pre-arrest bail in Crime No.20 of 2020 registered with Vile Parle Police Station and then Crime No.93 of 2020 registered with Sahar Police Station for the offence punishable under Sectins 376 and 417 of IPC.

2. The prosecution case is, complainant/victim and applicant met on a matrimonial site, thereafter decided to get married with the consent of the family members. The said meetings started from 16th December, 2018 and they were to be married on 20th January, 2020. However, in the intervening period, it is claimed that under the false promise of marriage applicant established physical relationship with the complainant. It is also alleged that on

account of non-fulfillment of demand of dowry of Rs.15,00,000/-, applicant walked away from the promise of marriage.

3. Submissions of learned counsel for the applicant are, relationship between the parties is consensual as is apparent from the contents of the FIR and whatsapp chat. He would further claim that till October, 2019, there was no complaint about the alleged physical relationship. However, since both the parties decided to part their ways and applicant got engaged with another girl, he is implicated in the false offence.

4. Learned APP is assisted by the counsel for the complainant. Counsel for the complainant would strenuously urge that the applicant has taken undue advantage of the friendship and has also not fulfilled promise of marriage. So as to substantiate his claim, he has relied on events and narrations in the FIR and other materials on record. It is claimed that from inception, there was no intention of the applicant to marry with the complainant. Under the false promise of marriage sexually exploited her. Learned APP would urge that the *prima-facie* involvement of the applicant in the offence can be inferred from the contents of the FIR and other material.

5. This Court by a reasoned order granted ad-interim protection in favour of the applicant on 14th October, 2020.

6. It appears that the applicant so as to substantiate his claim has relied on the whatsapp chat retrieved from his mobile. The claim of the complainant is that the said whatsapp chat is edited and only such messages which are to the benefit of the applicant are sought to be relied on. As a consequence, mobile was sent for analysis to Forensic Science Laboratory. The report came in favour of the applicant as it is found that whatever chat is relied on by the applicant is very much available in the mobile.

7. Counsel for the complainant has specifically urged that the claim of the complainant is that of producing incomplete chat or messages which are beneficial to the applicant is concerned, the said issue can be further looked into at the stage of trial while appreciating evidence.

8. However, this Court needs to be sensitive to the relationship between the applicant and the complainant for a quite long period i.e. from 16th December, 2018 till October, 2019 and the complaint came to be lodged on 13th March, 2020 after the applicant sent message that he is getting engaged with other girl.

9. In the aforesaid background, unexplained delay in lodging FIR has to be considered in favour of the applicant.

10. In the aforesaid background, ad-interim protection order of this Court stands confirmed.

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11. In the event of arrest, applicant is directed to be released on bail in Crime No.20 of 2020 registered with Vile Parle Police Station and then Crime No.93 of 2020 registered with Sahar Police Station for the offence punishable under Sectins 376 and 417 of IPC on executing P. R. bond of Rs.25,000/- with one or more sureties in the like amount.

12. Applicant shall attend the Investigating Officer from 6th December, 2021 to 10th December, 2021 between 10.00 a.m. to 12.00 noon and thereafter as and when directed.

13. Applicant shall surrender his mobile within a period of one week from today.

14. Applicant shall cooperate with the Investigating Officer till the matter of investigation viz. carry out medical examination etc.

15. Applicant shall neither influence the witnesses in any manner nor tamper with the evidence.

16. Applicant shall not directly or indirectly try to establish any contact with the victim or her family members till conclusion of the trial.

17. As such, application stands disposed of.

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PANCHAL
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[NITIN W. SAMBRE, J.]