

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

ANTICIPATORY BAIL APPLICATION NO.1217 OF 2021

Madhav Krishna Vasave

.. Applicant

Vs.

The State Of Maharashtra

.. Respondent

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Mr.S.R. Nargolkar a/w Arjun Kadam, Advocate for Applicant.

Mr. R.M. Pethe, A.P.P. for the State-Respondent.

Mr. Shrikant Rathi, for intervener.

PI. Pradip More, Byculla Police Station, present.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 14th SEPTEMBER, 2021**

PC.

1. This is an application for anticipatory bail in Crime No.60 of 2021 registered with Byculla Police Station for the offences punishable under Sections 376(2)(n), 354(D), 417, 419, 427, 504, 506(2), 502 of the Indian Penal Code, 1860 read with Section 66(C) of the Information Technology Act, 2000.

2. The prosecution case is that, the applicant is attached to constabulary cadre of the Maharashtra Police. The complainant joined the police force in 2010 as Police Constable. Presently she is attached to Cyber Police Station, Mumbai. The applicant was posted at Byculla Police Station from June 2012 to July 2017. While the complainant was attached to Byculla Police Station she got acquainted with the applicant in 2017. The said

acquaintance, developed into close friendship whereafter same advanced into love affair. In 2018, the applicant proposed complainant for marriage. She consented. They visited several places. The applicant suppressed that he is married. In 2019 she came to know that applicant was married person. On confronting applicant had informed her that his wife is mental patient and causing disturbance to him. Hence, complainant continued her relationship with applicant. In 2018, applicant had borrowed money from time to time to the tune of Rs.1,50,000/- from complainant. When she demanded the said amount from him applicant abused her. She stopped conversation with him. He kept on stalking and told her that he would divorce his wife. In December 2018 applicant visited house of complainant and told her that he wants to marry her. He induced her to have physical relationship. On the false promise of marriage, he persuaded her to succumb to his physical desires at various places. Subsequently, relationship soured. Complainant alleged that applicant was emotionally and physically abusing her and pressurizing her to maintain relationship. The applicant had recorded her obscene videos and threatening to upload it on social media. The applicant had sent obscene videos on her mobile hand set and threatened that he would disseminate the same to her relatives if she would refuse to maintain the relationship with him. In September 2020, her marriage with one, Shailesh was proposed by her family to which she had consented. On 29th September, 2020

when she was commuting from Pune to Mumbai, applicant called her persistently and had threatened to make the obscene videos viral if she did not alight at Sanpada. The complainant alighted at Sanpada. The applicant snatched her mobile and banged it on floor and damaged it. Applicant removed SIM and memory card and took it away. On the next day when she asked for the memory, SIM card of the mobile, the applicant called her at Mazgaon. When she visited that place, she was abused and threatened that he would throw acid on her face. Thereafter, the complainant disclosed, 'state of affairs', to applicant's wife. On 30th October, 2020 he returned SIM/Memory card. She further alleged that on 1st October, 2020, applicant had sent a message to sister of her fiance. Resultantly, her proposed marriage was broken down. She alleged, the applicant had sent objectionable messages on the face-book account of her fiance from his face-book account. Also, she alleged that applicant by using pass-word of her face-book account, had sent objectionable messages to face-book account of sister of her fiance.

3. The learned counsel for the applicant submitted that the sexual relationship between the applicant and the complainant was consensual and voluntary. It is contended that the complainant was aware about the marital status of the applicant. It is submitted that there is difference between the 'breach of promise to marry' and 'not to fulfill the false promise'.

It is submitted that the applicant was not having any intention to deceive the complainant. The allegations of recording obscene videos are false. Applicant has handed over his mobile phone to Investigating Officer. Mr. Nargolkar has relied on the affidavit of the complainant to contend that applicant does not possess any lap-top or computer or any other such device, which can be used and capable of storage of alleged objectionable material. The allegations of snatching mobile and damaging the same on 29th September, 2020 was false and concocted. On 30th September, 2020, applicant had purchased new mobile for the complainant from Vijay Sales India Private Limited, which is evident from copy of the invoice placed on record. Since applicant has handed over mobile hand-set to the Investigating Officer to verify/ascertain allegations of recording obscene pictures, his custodial interrogation is not required. History of assault narrated by the complainant to Medical Officer, shows that such physical relationship was not forced on her and it was consensual. The applicant is not likely to flee the Court of justice. He has been suspended from the service after registration of offence. On these grounds, applicant seeks pre-arrest bail.

4. The complaint, prima-facie suggests love and sexual relationship between the applicant and the complainant was consensual and voluntary since beginning. The complainant was examined by the medical officer. History narrated by her to

the medical officer shows that the complainant had last physical relationship with the applicant in August, 2020. The alleged incident of damaging her cell phone had occurred on 29th September, 2020. Assuming the allegation to be true, the incident had occurred during quarrel when complainant had disclosed about her marriage with another person. The complainant has alleged that applicant took away SIM/Memory card which were returned to her. It is alleged that the SIM card was misused for sending message to sister of her fiancé. It is not the case that phone was banged to destroy evidence. A new hand-set was purchased from M/s. Vijay Sales as evident from the invoice copy of the same being placed on record.

5. Protection was granted to applicant by order dated 4th June 2021. This Court had analysed factual aspects, recorded objection of complainant and observed that prima facie it was consensual relationship. The applicant has been suspended from service and he would be available for investigation.

6. Learned APP has tendered communication dated 07.09.2021 enclosing report of Directorate of Forensic Science Laboratories. The report mentions that the exhibits submitted by the police were mobile (Exh-1), SIM card (Exh-2), SIM Card (Exh-3) and photographs (Exh-4). Analysis showed pornographic video was found relating to case. Share chat application was found installed. Traces of social media

application were not found in mobile phone. Sim Cards marked as Exh-2 and Exh-3 do not have the capability to store media files. Learned APP submitted that report from face-book is awaited. The applicant should make himself available for medical examination. Rest of investigation is completed and charge-sheet would be filed within one week. Since face-book report is awaited avenue of section 173(8) of Cr.P.C. would be kept open. Learned advocate for complainant on instructions from complainant submitted that offence is of serious nature. Applicant was not arrested immediately when interim protection was not granted to him. FIR was registered about six months ago. Investigation is slow. Charge-sheet is not filed. The complainant had to run from pillar to post for her grievances. The video of relationship was seen by others.

7. In the light of observations made hereinabove, custodial interrogation of the applicant is not necessary. The Forensic Report has been received. The question of tampering evidence does not arise. The interim relief granted to applicant can be confirmed.

8. Hence, I pass following order: -

ORDER

- (i) Anticipatory Bail Application No.1217 of 2021 is allowed.
- (ii) Interim order dated 14.06.2021 is confirmed;
- (iii) In the event of arrest of applicant in C.R. No. 60 of 2021

registered with Byculla Police Station, he shall be released on bail on executing P.R. bond in the sum of Rs.50,000/-, with one or more sureties in the like amount;

- (iv) The applicant shall report Investigating Officer on 20th, 21st and 22nd September 2021 between 11.00 am to 01.00 pm.
- (v) The applicant shall make himself available for his medical examination.
- (vi) The applicant shall not contact the complainant or her relatives at any point of time.
- (vii) Application is disposed off.

(PRAKASH D. NAIK, J.)