

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

ANTICIPATORY BAIL APPLICATION NO.1295 OF 2021

Nitin Vasant Kharat
versus
State of Maharashtra

.... Applicant
.... Respondent

.....

- Mr. M. K. Juris i/b. Juris Associates, Advocate for Applicant.
- Smt. M. R. Tidke, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 05th JULY, 2021
(Through video conferencing)

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.132/2021 registered with Malvani Police Station, under sections 376, 420 of the Indian Penal Code.
2. The FIR is lodged by the prosecutrix. She has stated that she was married to her first husband in 2014, but because of his addiction to liquor, she did not stay with him. In the year 2016 she got acquainted with the present Applicant. They developed friendship. It is her case that she had told the Applicant about her first existing marriage.

3. It is mentioned in the FIR that the Applicant told her that he liked her and that he wanted to marry her. The informant consented. In November 2016 they had their first relationship in her own house when her parents had gone out of the house. She has stated that they regularly had their physical relations since then. The FIR mentions that the informant got married second time to another person on 28/05/2019. Even thereafter she kept relations with the Applicant. It is her case that the Applicant promised to marry her. In October 2020, the informant and the Applicant eloped together and stayed in the house of the Applicant. It is her case that they continued with their physical relations and that she gave consent for such relations only because he had promised to marry her. Subsequently he refused to marry her. Therefore this FIR is lodged.

4. Heard Mr. Juris, learned counsel for the Applicant and Smt. Tidke, learned APP for the State.

5. Learned counsel for the Applicant submitted that the relationship was purely consensual and by no stretch of imagination it can be alleged that the offence of rape is made out and it is difficult to believe that the consent was obtained under some misconception of fact.
6. Learned APP relied on averments made in the FIR. She submitted that the informant consented to have physical relations only because the Applicant had promised to marry her.
7. I have considered these submissions. The informant is an adult lady. She was married once and then she got married with another person. That was her second marriage. Throughout this, she was having illicit physical relations with the present Applicant. It was not possible for the Applicant to marry her due to her own marital status. It cannot be said that the informant was not aware of this situation. The narrations in the FIR clearly show that it was a purely consensual relationship. It

was difficult to believe that she consented on false promise of marriage. She was well aware of her own marital status and during subsistence of her second marriage, she had eloped with the Applicant. That itself shows that she was a consenting party and she had willingly participated in the relationship knowing very well all the consequences. Therefore custodial interrogation of the Applicant is not justified. He can be protected by an order of anticipatory bail.

8. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.132/2021 registered with Malvani Police Station, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)