

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

ANTICIPATORY BAIL APPLICATION NO. 1397 OF 2021

Amol Sambhaji Sonawane

... Applicant

versus

The State of Maharashtra & Anr.

.... Respondents

.....
Mr. Avinash Avhad, for the Applicant.

Mr. S. H. Yadav, APP for State- Respondent.

.....

CORAM : SARANG V. KOTWAL, J.

DATE : 16th JUNE, 2021

(Through Video Conferencing)

P.C. :

1. The applicant is seeking anticipatory bail in connection with C.R. No.281/2021 registered at Kamothe Police Station, Navi Mumbai on 26th April 2021 under Section 376(2)(n), 323, 504 of Indian Penal Code (for short 'I.P.C.').

2. Heard Mr. Avinash Avhad, learned Counsel for the applicant and Mr. S. H. Yadav, learned APP for the State.

3. The F .I.R. was lodged by the prosecutrix herself. She

has stated that she was working with Maharashtra State Electricity Distribution Company Limited as Asstt. Engineer at Kharghar Branch. The applicant was working at the same post at Panvel. They got acquainted in the year 2018. The F.I.R. mentions that the applicant had told her that he was not getting along well with his wife and that he was planning to obtain divorce from his wife. It is mentioned that the applicant told her that he liked the informant and that he wanted to marry her. In January 2019, the applicant took the informant to a lodge at Shilphata, Kalyan. She was taken to a room by the applicant. There he suggested that they should have physical relations. The informant allegedly refused but he kept physical relations against her wish. The F.I.R. goes on to mention that both of them thereafter visited the same lodge on many occasions and had physical relations. On 23rd December 2019, there was some quarrel between the informant and the applicant and therefore, she had consumed sleeping pills. The applicant had taken her to a dispensary. She recovered. She had purchased a flat at Baner, Pune. There also they had their physical relations. After that, the applicant started telling her that he was

facing difficulties in obtaining divorce, as his wife's father was quite influential. The F.I.R. mentions that the applicant suggested to the informant that she should get married to someone else and she should take divorce. Thereafter, the applicant and the informant could get married. The F.I.R. further mentions that, in November 2020 informant's marriage was fixed. Even thereafter, she kept physical relations with the applicant on 13th December 2020. On 2nd January 2021, they had their physical relations in a hotel at Lonawala. The same thing was repeated on 26th March 2021 in the earlier lodge at Shilphata. On 6th April 2021, the informant got married with third person. She stayed with him only for two days and then she went back to her own house. After that the applicant refused to marry her and therefore, she lodged her F.I.R.. It is her case that she was never agreeable to keeping physical relations and only on his representation that he would marry her she had kept the physical relations. On this basis, F.I.R. is lodged.

4. Shri Avhad, learned Counsel for the applicant submitted that plain reading of the F.I.R. shows that it was a

consensual relationship. The informant was knowing about consequences of her act. She was also knowing that the applicant was married and no steps for divorce were taken by him for more than two years. He submitted that the wife of the applicant had lodged N.C. complaint against the applicant on 14th April 2021. The applicant himself had given a complaint to Police against the informant on 14th April 2021. After that, as a counter blast; the informant had lodged her own F.I.R. on 26th April 2021. He submitted that Additional Sessions Judge, Panvel-Raigad rejected his anticipatory bail application by observing that the applicant should have attended the Police Station after he had recovered from Corona infection. He submitted that after he had recovered, he had in fact attended the Police Station on 31st May 2021 which is reflected from the acknowledgment by the Police Officer to that effect, a copy of which is at page 51 of this application. He therefore, submitted that the applicant deserve protection of anticipatory bail.

5. Learned APP opposed this application. He submitted that the applicant was 40 years of age and the informant was 27

years of age. The intention of the applicant was dishonest right from the inception. He submitted that the applicant had cheated another girl in a similar way. He submitted that the consent was given by the informant because of misconception of the facts and therefore, offence was made out. The applicant has not co-operated with the investigation.

6. I have considered these submissions.

7. As rightly submitted by learned Counsel for the applicant Mr. Avhad, the relationship appears to be consensual. The narration in the F.I.R. itself shows that the informant was aware of the applicant's marital status. Though it is her case that the applicant had told her that he would obtain divorce; from 2018 onwards no steps for divorce were taken by the applicant. This fact was also to the knowledge of the informant and yet their physical relations were continued at different places on various occasions. The conduct of the informant herself shows that she had got married to a third person and had left him within two days of her marriage. She had kept physical relations with the applicant

even when her marriage was fixed with another person.

8. At this stage, it would not be proper to observe anything further but the applicant has sufficiently made out the case to show that it was a case of consensual relationship and the informant was fully aware of all the relevant facts.

9. According to Shri Avhad, the applicant was found to be Corona positive on 14th May 2021 and after his quarantine period was over, he had attended the Police Station on 31st May 2021. This shows that he had no intention not to co-operate with the investigation or to make himself unavailable. In this background, since the investigation is going on, further observations are not necessary. The investigation can go on independently. The observations made in this application are restricted to passing the order in this application and those observations shall not influence the investigation or other proceedings.

10. Considering the above discussion, the applicant has sufficiently made out a case for grant of anticipatory bail order.

11. Hence, the following order.

ORDER

- (i) In the event of his arrest in connection with C.R. No.281/2021 registered at Kamothe Police Station, Navi Mumbai, the Applicant is directed be released on bail on his furnishing PR. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)