

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

ANTICIPATORY BAIL APPLICATION NO.1488 OF 2021

Samir Chandrakant Kurtadkar Applicant

versus

State of Maharashtra Respondent

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- Mr.Saurabh Butala, Advocate for Applicant.
- Smt.J.S. Lohokare, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 12th JULY, 2021
(Through video conferencing)

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.159/2021 registered with Kalwa Police Station, on 19/05/2021, under sections 376, 506(2) of the Indian Penal Code.

2. The FIR is lodged by the prosecutrix herself. She has stated that she had got married with her husband in November 2011 and they had a 9 year old daughter. There were matrimonial disputes between the informant and her husband.

The Applicant, in past, was studying in the same school with the Informant. In May 2020, they again established their friendship through facebook. The informant and the Applicant were in regular touch with each other. The Applicant's sister had committed suicide and the informant had dispute with her husband. Therefore they showed sympathy to each other. Their friendship grew. The FIR mentions that on 20/08/2020, the informant met the Applicant in a park. After two days, the Applicant told her that he had photograph of their meeting in that park. He threatened her to cooperate with him. On 22/08/2020 they again met near a petrol pump. At that time, the Applicant told that he had deleted the photograph. The informant forgave him. After that, they again met on 28/08/2020. This time they met in a hotel room. It is her case that in that room they had their physical relation, but it was against her wish. Thereafter the Applicant started threatening the informant. The FIR mentions that he had physical relationship with her on 06/09/2020, 11/09/2020, 15/09/2020, 19/09/2020, 06/10/2020 and 21/10/2020 in the

same hotel. According to the informant, he kept this physical relationship under threats of exposing their relations.

3. Thereafter the Applicant started getting possessive. It is further mentioned that he used to threaten her that he had some photographs which could cause embarrassment to her. It is further alleged that the Applicant started getting friendly with the informant's mother and her brothers.

4. On 06/01/2021, 09/01/2021 and 19/01/2021 they had again had their physical relations. The Applicant had paid some amount to the informant. The informant got pregnant. It is her case that at the Applicant's instance, the informant consumed some pills causing abortion. After that the Applicant transferred Rs.50,000/- in favour of the informant on 01/02/2021. In that month, the Applicant's wife got to know about their relations, she confronted the informant and there was a quarrel. After that the Applicant tried to contact the informant, but she did not respond and lodged this FIR.

5. Heard Mr.Saurabh Butala, learned counsel for the Applicant and Smt.J.S. Lohokare, learned APP for the State.
6. Learned counsel for the Applicant submitted that the FIR itself shows that it was a consensual relationship. He relied on the NC complaint lodged by first informant on 06/03/2021 at Kalwa Police Station, in respect of some financial dispute between the Applicant and the informant. He submitted that there was no reference to any of these allegations in the NC, though the informant had approached the police station. He submitted that the Applicant himself has given complaint to the police on 06/04/2021 about their financial disputes. In that complaint he had expressed apprehension that the informant was likely to lodge false complaint against him making allegations of rape. He submitted that it was only since the Applicant was demanding back his Rs.60,000/-, the informant lodged this FIR.

7. Learned APP opposed this application. She submitted that the Applicant has threatened the informant and therefore she had to consent for these physical relations. It was not voluntary consent.

8. I have considered these submissions. The narrations in the FIR shows how the informant and the Applicant got in touch with each other and how their friendship grew. At the first instance, the Applicant had threatened her that he would upload the photograph on internet, which he had clicked in the park. The informant had expressed her displeasure. Even after that, the informant continued meeting him and in fact on the first occasion, on 28/08/2020, she had accompanied the Applicant to a hotel room. There they had their physical relations. It is difficult to accept her contention that the physical relations were against her will because she had voluntarily accompanied the Applicant in room of a hotel. Thereafter there were number of instances, where the Applicant and informant had their physical relations at different places on different occasions. The

informant has taken a stand that on these instances, the physical relations were against her wish. Considering the number of occasions and considering that they had gone to different places, it is difficult to accept her stand. She has taken this stand much belatedly. It is also significant that she had lodged her NC on 06/03/2021. That time she had approached the police, but there is absolutely no mention of such allegations of physical relations without her consent. The Applicant had given a complaint against her on 06/04/2021, though no FIR was lodged pursuant to that. After all this, the informant had given her FIR on 19/05/2021. The FIR itself mentions that it was lodged after the Applicant's wife had confronted her with their relations. Therefore sufficient doubt is created regarding the informant's version and particularly of her stand that she was made to give consent under some threats; considering that they had physical relations on many occasions. In this view of the matter, custodial interrogation of the Applicant would not be justified. I am inclined to protect him by way of anticipatory bail.

9. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.159/2021 registered with Kalwa 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) The Applicant shall attend the concerned Police Station as and when called and shall cooperate with the investigation.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)