

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

ANTICIPATORY BAIL APPLICATION NO. 1523 OF 2021

Jitendra Dinesh Mandal Applicant
Versus
The State of Maharashtra Respondent

Mr.Vivek B. Pandey, for the applicant.
Smt. M.R. Tidke, APP for the State/Respondent.

**CORAM: SARANG V. KOTWAL, J.
DATE : 14th JULY, 2021**

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No. 269 of 2019 dated 22/04/2021 registered at Vakola Police Station, Mumbai, under sections 376(2)(n), 323, 504 of the Indian Penal Code.
2. Heard Mr. Vivek Pandey, learned counsel for the applicant and Smt. M.R. Tidke, learned APP for the State.
3. The FIR is lodged by the prosecutrix herself. She was an adult of age 27 years at the time of filing of

the FIR. She has stated that she was working in a private company since 2017. The applicant was also working with the company. Because of the work, the informant got acquainted with the applicant. The applicant told her that he liked her. The informant was aware that the applicant was a married man. Therefore, she did not encourage him. However, he persisted in his efforts. Their friendship turned into a love affair. The applicant had told his wife about their close friendship. It is mentioned in the FIR that, the applicant had told the informant that he was not happy with his wife and suggested to the informant that they could have physical relations. However, the informant had told him that unless they were married she would not keep physical relations.

4. On 14/05/2019, the applicant went to the informant's house. The informant had told him that there was no one in the house. On that occasion, they had their first physical relation. In the FIR, she has

mentioned that these relations were against her wish. After that, the informant was telling the applicant to get married with her as early as possible. The FIR goes on to mention that they had their physical relations frequently from May 2019 till January 2021. Since February 2021, the applicant started avoiding her and refused to marry her. The informant confronted him on 28/03/2021. At that time the applicant had quarreled with her. He beat her and refused to marry her. On this basis the FIR is lodged. It is her contention that from 14/05/2019 to 16/03/2021, they had regular physical relations.

5. Learned Counsel for the applicant submitted that it was a consensual relationship and no offence of rape is made out.

6. Though learned APP opposed this application, she could not submit how that the relationship was not consensual.

7. I have considered these submissions. The FIR itself mentioned that the informant was aware of marital status of the applicant. The FIR gives exact dates on which they had their physical relations. The informant was aware that the applicant had not taken steps in getting divorce from his wife and yet she continued to have physical relations with him. The narration in the FIR indicates that it was a consensual relationship. Therefore, applicant's custodial interrogation is not justified. Hence, I am inclined to grant anticipatory bail to the applicant.

8. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R. No. 260 of 2021 registered with Vakola Police Station, Mumbai, 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 co-operate with the investigation.
- (iii) The applicant shall not try to contact the informant and shall not cause any type of harassment to her.
- (iv) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)