

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

ANTICIPATORY BAIL APPLICATION NO. 870 OF 2020

Pravin Dhanphal Zele	 Applicant
Versus	
The State of Maharashtra and Anr.	 Respondent

Mr. Ranjeet Pawar, for the Applicant.
Ms. J.S. Lohokare, APP for the State/Respondent.
Ms. Tripti Shetty, for the Intervenor.
API Shri L.S. Ukirde, Chatushrungi P.S.Pune city present.

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**CORAM : SARANG V. KOTWAL, J.
DATE : 18th JANUARY, 2021**

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No. 1358 of 2020 dated 18th November 2020, registered at Chatushrungi Police Station, Pune City, Pune, under sections 376(2) and Section 417 of the Indian Penal Code.

2. The FIR is lodged by the prosecutrix herself. She is a marathon runner. She got acquainted with the applicant in the year 2018. He was having a runner's

academy. The applicant developed friendship and then love affair with the informant. The FIR mentions that he proposed to her. The informant expressed her doubt that applicant must be already married but he denied that he was married. It is alleged in the FIR that that they continued meeting and developed their physical relations. FIR further mentions that the informant got a friend request from applicant's wife on facebook. It is mentioned in the FIR that, after that the applicant admitted that he was married but represented that he has married to widow of his elder brother and that family members had forced him to marry her. The applicant represented to the informant that he was about to get divorce from his wife and then he would marry her. After that, on 15/03/2020, they again went to a lodge at Bhugaon, Paud, Pune. There again they had physical relations. Subsequently, the applicant started avoiding the subject of marriage. He refused to give divorce to his wife. Therefore, informant felt cheated and lodged this FIR.

3. This Court (Coram: Bharati Dangre J.) vide order dated 10th December 2020 has passed interim order in favour of the applicant in which it was observed that prima facie, it was apparent that both the applicant and the prosecutrix, being major, had made a choice of establishing the physical relationship. It was clearly observed in the said order that no custodial interrogation was warranted. With these observations an interim protection was granted to the applicant.

4. Today, I have heard Mr. Ranjeet Pawar, the learned Counsel for the Applicant, Ms. J.S. Lohokare, the learned APP for the State and Ms. Tripti Shetty, the learned Counsel for the Intervenor-first informant.

5. The learned Counsel for the applicant submitted that the FIR itself mentions and demonstrates that it was a consensual relationship and therefore, offence of rape was not made out. He, therefore, prayed that interim order be made absolute.

6. The learned counsel for the first informant submitted that the FIR shows that the informant agreed for the physical relationship at the instance of the applicant. She was misled by the false promise of marriage made by the applicant. She submitted that, during pendency of this application, the applicant had tried to contact the informant and was harassing her. She, therefore, opposed the application.

7. The learned APP relied on the FIR and the investigation papers in respect of the investigation carried out so far. The investigation shows that the prosecutrix and the applicant had visited various lodges indicating their physical relations.

8. I have considered all these submissions. As noted by the earlier order granting interim relief, it is apparent that the relationship was consensual. Though the FIR mentioned that initially the applicant misrepresented the facts and concealed factum of

marriage, but subsequently the informant became aware of his marital status. At that point of time, the applicant had suggested that he would give divorce to his wife but he did not keep his word. Significant point is that the informant was well aware of his marital status and even thereafter, she continued to have physical relations with the applicant. This clearly indicates that it was a consensual relationship. The allegations are that their relations continued till March 2020 and thereafter the FIR is lodged on 18/11/2020. This also indicates that it is an after thought and the delay in lodging the FIR in this particular case assumes some importance.

9. Taking over all view of the matter, custodial interrogation of the applicant will not serve any purpose. Most of the facts, alleged in the FIR, are admitted for which custodial interrogation is not necessary. Considering the consensual nature of the relationship between the parties, the applicant can be protected by an order of anticipatory bail. Hence the following order.

ORDER

- (i) In the event of his arrest in connection with C.R.No. 1358 of 2020 dated 18th November 2020, registered with Chatushrungi Police Station, Pune City, Pune, the Applicant is directed to be released on bail on his furnishing a PR bond in the sum of Rs.25,000/- (Rupees Twenty Five 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 himself or through his family members or his friends and shall not cause harassment to her.
- (iv) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)