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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2183 OF 2021
WITH
INTERIM APPLICATION NO.2248 OF 2021

Sunil Ramchandra Sharma] .. Applicant
Versus
The State of Maharashtra] ... Respondent

Mr. Niranjan Mundargi i/b Mr. Vivek Punjabi for Applicant.
Smt. Veera Shinde, APP for State.
Mr. R. N. Gite for Intervenor.
Mr. Somnath P. Gengaje, ASI, Mumbai Naka Police Station, Nashik, present.

CORAM :- A. S. GADKARI, J.
DATE :- 15 SEPTEMBER, 2021

P. C. :-

1. This is an application under Section 438 of Cr.P.C. for pre-arrest bail. Applicant is apprehending arrest in C.R.No.169 of 2021 dated 02/08/2021 registered with Mumbai Naka Police Station, District – Nashik, under Sections 376, 377, 328 and 420 of the Indian Penal Code.
2. Heard Mr. Niranjan Mundargi, learned Counsel for the Applicant, Mr. R. N. Gite, learned Advocate for informant and Smt. Veera Shinde, learned APP for State. Perused record of investigation.
3. The First Information Report is lodged by the prosecutrix who is aged about 33 years. The prosecution case, in brief, is that the prosecutrix joined astrology teaching classes and therein she got acquainted with the Applicant. The Applicant used to teach astrology to

the prosecutrix at a place situated near Shingada Talao, Nashik. On 22/12/2019, the Applicant gave mango juice to the informant. It is the prosecution case that the said mango juice was laced with stupefying substance. After consuming the said juice, the prosecutrix felt giddiness and when she was in semiconscious condition, it is alleged that the Applicant committed an offence as contemplated under Section 376 of the IPC against her wish and also did videography of the said act. Subsequently, the Applicant promised the prosecutrix to marry with her. It is alleged that by extending threat of circulating the said videography on social media, the Applicant further exploited the prosecutrix. The prosecutrix has categorically alleged that, the Applicant under coercion forcibly committed unnatural offence as contemplated under Section 377 of the IPC against her. That, the Applicant also extorted an amount of Rs.1,50,000/- and gold ornaments from the informant. When the prosecutrix asked the Applicant as to when he would marry with her, Applicant dodged her request. In this brief premise, the present crime is registered.

4. Mr. Niranjana Mundargi, learned Counsel for Applicant, submitted that, the act as contemplated under Section 376 of the IPC, was a consensual act between two adult persons. He submitted that the allegation of offence committed under Section 377 of the IPC is a false allegation. He further, on instructions, submitted that the Applicant never

did videography of their intimate relations and the allegation to that effect in the FIR is again a false allegation. He further submitted that the Applicant never demanded or extorted any amount from the prosecutrix. He submitted that, there is correspondence on record by which it can be inferred that, the prosecutrix was having love affair with the Applicant. He submitted that if police so desires, the Applicant is ready and willing to surrender his mobile phone and therefore, the custodial interrogation of the Applicant is not necessary. He therefore prayed that, the present application may be allowed.

5. It is well settled law as has been enumerated by the Hon'ble Supreme Court in the case of *Aman Kumar and Anr. Vs. State of Haryana [AIR 2004 SC 1497]*, that the prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. That there is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. That in the later case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. The same view is further expressed by the Supreme Court in the case of *State of Himachal Pradesh Vs. Shree Kant Shekari [AIR (2004) SC 4404]*.

6. A bare perusal of the FIR would clearly indicate that an offence under Section 377 of the IPC is alleged against the Applicant. It is

also alleged that the Applicant has effected videography of the alleged offence as contemplated under Section 376 of the IPC. Undoubtedly, the allegation of commission of offence under Section 377 of the IPC is not only serious but amounts to a heinous crime in view of the categorical allegation made by the prosecutrix. The submission of the learned Advocate for the Applicant that, if the police so desire, the Applicant is ready and willing to surrender his mobile phone, cannot be accepted at its threshold. That for an alleged offence of such a heinous nature, this sort casual attitude or approach of Applicant cannot be accepted and entertained by the Court. The custodial interrogation of the Application is not only necessary for recovery of the said mobile phone but also for recovery of the amount and the ornaments alleged to have been extorted by him from the prosecutrix.

7. In view of the above and after taking into consideration the gravity of offence and serious allegations against the Applicant, this Court is of the opinion that, the Applicant does not deserve to be protected by pre-arrest bail.

8. Application is accordingly rejected.

9. In view of rejection of Anticipatory Bail Application, Interim Application No.2248 of 2021 filed for intervention does not survive and the same is also disposed off.

(A. S. GADKARI, J.)