

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**BAIL APPLICATION NO.211 OF 2022**

RANJIT S/O BHANUDAS GOUND  
VERSUS  
THE STATE OF MAHARASHTRA

...

**WITH**  
**CRIMINAL APPLICATION NO.624 OF 2022**  
**IN BA/211/2022**

...

Mr. A. A. Nimbalkar, Advocate for applicant.  
Mr. V. S. Badakh, APP for the respondent – State.  
Mr. N. N. Bhagwat, Advocate for the original informant.

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**CORAM : SMT. VIBHA KANKANWADI, J.**

**DATE : 26.04.2022**

**ORDER :-**

. Criminal Application No.624 of 2022 filed by the original informant seeking permission to assist learned APP stands allowed and disposed of.

2 Present application has been filed under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.367 of 2021 registered with Taluka Jalna Police Station, Dist. Jalna for the offences punishable under Sections 376, 452, 506 of Indian Penal Code.

3. It will not be out of place to mention here that the earlier bail application of applicant i.e. Bail Application No.1302 of 2021 was disposed of as withdrawn by this Court on 22.11.2021. The charge-sheet has already been filed in this case on 04.10.2021 and the said withdrawal is after the filing of charge-sheet. Under this background, it is now required to be seen as to whether any ground is made for exercising the powers under Section 439 of the Code of Criminal Procedure in favour of the applicant.

4. Heard learned Advocate Mr. A. A. Nimbalkar for the applicant and learned APP Mr. V. S. Badakh for the respondent – State assisted by learned Advocate Mr. N. N. Bhagwat for the original informant.

5. It has been vehemently submitted on behalf of the applicant that the applicant was arrested on 29.08.2021 and since then he is in jail. The applicant is a lawyer by profession and agriculturist. The informant has falsely contended that she had filed divorce petition against her husband by giving the Vakalatnama of the applicant in September, 2019. Perusal of the FIR would show that the informant is 30 year old lady whose marriage had taken place on 19.05.2006 and she had issue from the first husband. She has stated that her relationship with her husband was not good and, therefore, they were separately residing and then she

alleges that she filed divorce petition through the applicant. She has falsely alleged that in the capacity as Advocate, the applicant had given her promises and posed that he is also residing separately from his wife and by giving promises to marry, he had invited the informant to reside with him on 04.01.2020 onwards and thereafter, between 04.01.2020 to 29.02.2020, he had sexual intercourse with her but he avoided to perform marriage with her. She became pregnant from him and, thereafter, applicant started saying that he cannot marry with her and she should go anywhere. She was threatened to kill. She had lodged Crime No.572 of 2020 on 11.10.2020 against the applicant under Sections 376, 420, 344, 323, 504, 506 of Indian Penal Code, however, it is alleged that the applicant had taken something from her on bond and took her signature and then he was released on bail. The learned Advocate for the applicant has pointed out the certified copy of the Vakalatnama in Hindu Marriage Petition filed by the informant. That Vakalatnama shows that some other Advocate was representing her and not the applicant. Even the said petition was presented by that Advocate and not the applicant. Those proceedings were going on and when the informant allegedly started residing with the applicant, there was no decree of divorce in favour of the informant. It appears to be a consensual act and in order to give a fresh cause of action, she has

stated that at night time on 05.08.2021 the applicant went to her house and by giving threats had raped her. Now, the investigation is complete and charge-sheet has been filed. Therefore, the custodial interrogation of the applicant is not required. The applicant was apprehending that the informant will implicate him in some offence and, therefore, he had lodged a complaint application to the District Superintendent of Police, Jalna on 07.06.2021 and again a complaint with Police Inspector, Ambad Police Station on 03.07.2021. The informant has got her Pan card, Aadhar card and Ration card prepared posing that she is the wife of the applicant when in fact there is no legal marriage between them. The learned Advocate for the applicant has taken this Court through the other documents and also the order passed by the Division Bench of this Court in Criminal Application No.2344 of 2020 dated 19.04.2021 for quashing of earlier FIR i.e. Crime No.572 of 2020 lodged at the instance of the present informant itself, however, the Division Bench was not inclined and the said application for quashing of the FIR was dismissed. The learned Advocate for the applicant, therefore, submitted that since the applicant has been implicated, he deserves to be released on bail.

6. Per contra, the learned APP well assisted by learned Advocate Mr. N. N. Bhagwat for the informant submitted that the applicant is an Advocate who being the responsible citizen is required to protect the

rights of oppressed person and not take disadvantage of his said situation. Though the Vakalatnama of some other person might be there, yet the applicant was pursuing the matter before the Civil Judge Senior Division and then before the Family Court, Jalna in respect of divorce of the informant with her earlier husband. There is evidence to the effect that the applicant had performed marriage with the informant under the pretext that he would register the marriage later on and then for a certain period, the informant was residing with him. She became pregnant from him and, thereafter, the applicant has flatly refused to marry. The statement of son of the informant, who is 13 years old, would clearly show that he was addressing the applicant as second father. He has specifically stated that he along with informant were residing with the applicant for some time. Even when earlier the applicant was in jail in connection with the earlier FIR, during that period, his mother gave birth to daughter and since the applicant was in jail, the informant, her son and daughter from the applicant started residing in another rented premises, but then he says that still the second father i.e. present applicant used to come to meet them. He has specifically stated that the applicant had gone to their house on 05.08.2021. There are other statements of witnesses also which show that the applicant had introduced or accepted his relations with the

informant. By playing fraud on the informant, he had taken signatures on certain documents and then he has utilized it for getting the earlier FIR quashed. He filed Criminal Application No.2344 of 2020 on the basis of those forged documents, however, the Division Bench of this Court refused to believe the contents and ultimately rejected that application. With this kind of background and threats to the informant, the applicant will cause danger to the informant as well as her daughter and son. He does not deserve any sympathy.

7. Reliance has been placed on the decision of the Division Bench of this Court in *Shyamsundar s/o Haribhau Wagh Vs. The State of Maharashtra and another*, Criminal Writ Petition No.1734 of 2019 decided on 02.12.2020, wherein also the petitioner was Advocate and he sought quashing of the FIR. In paragraph No.9, it was observed thus :-

*“9. Thus, the relationship between lawyer and the client is fiduciary relationship. On the backdrop of relationship between the Advocate and his client being fiduciary relationship, whether consent for sexual intercourse is material. Section 376-C of the Indian Penal Code deals with this contingency.*

**“Section 376-C. Sexual intercourse by a person in authority:** Whoever, being -

- (a) in a position of authority or in a fiduciary relationship; or
- (b) a public servant; or

*(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or*  
*(d) on the management of a hospital or being on the staff of a hospital,*  
*abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine."*

*From this Section, it is evident that whoever being in a fiduciary relationship abuses such position and has sexual intercourse with a woman with whom he has fiduciary relationship, such an act amounts to rape. In such cases consent of woman is immaterial."*

These observations are applicable to the present case also since the applicant herein is also an Advocate and the informant was his client, which was the same situation in that case also.

8. Since most of the facts have already been narrated earlier they are not repeated once again. The situation stands as on today is that the earlier FIR vide Crime No.572 of 2020 under Sections 376, 420, 344, 323, 504, 506 of Indian Penal Code is still pending against the applicant

and his application for quashing of that FIR has been rejected by the Division Bench of this Court. This is the second offence once again under Sections 376, 482 and 506 of Indian Penal Code, especially wherein the fresh incidence is stated to be dated 05.08.2021 at about 11.00 p.m. The earlier part i.e. since 2019 to 11.10.2020 (when the earlier FIR was lodged) are the part of the facts of the earlier FIR also and they were already considered by the Division Bench of this Court. They need not be considered once again here. As regards the incident dated 05.08.2021 is concerned, there is evidence in the nature of statement under Section 161 of the Code of Criminal Procedure of the minor son of the applicant. His natural presence cannot be doubted. He is addressing the applicant as second father. Further, as regards the birth of the daughter out of the relationship is concerned, it is also the part of the earlier FIR. When fresh incident is alleged and there is evidence to that effect, this is not a fit case where the discretionary relief should be granted in favour of the applicant. The observations from *Shyamsundar Wagh (Supra)* are applicable here also. Hence, the bail application stands rejected.

[SMT. VIBHA KANKANWADI, J.]