

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.161 OF 2022

BAPU S/O ABBA KHURANGE
VERSUS
THE STATE OF MAHARASHTRA

.....

Advocate for Applicant : Mr. R. R Karpe
APP for Respondent-State : Mr. A. M. Phule

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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
25-03-2022**

**Date of Pronouncing The Order :
27-04-2022**

ORDER :

1. Applicant is apprehending his arrest in connection with Crime No.904 of 2021, registered with Shrigonda Police Station, District Ahmednagar, for the offence punishable under Section 363, 366, 376, 504 r.w.34 of IPC.
2. Heard learned Advocate Mr. R. R. Karpe for applicant and learned APP Mr. A. M. Phule for respondent-State. In order to cut short, it is stated that both of them have made submissions in support of their respective contentions.

3. Perusal of the FIR would show that it has been lodged by a young girl of 20 years old. She herself has stated that in the month of February 2021 the proposal for her marriage with the applicant was put before her as well as her family members. Her father had refused the proposal, however, still she was talking with the applicant and because of that they fell in love with each other. She then states that her father was against their marriage. She then states that 15 days prior to 29-11-2021 she had told the applicant that if he wants to marry her then he should ask her family members. Then she comes with the story that she was forcibly taken by the applicant and co-accused persons to Alandi Devachi, Taluka Khed, District Pune. According to her, her marriage was forcibly performed with the applicant and she had signed on the stamp papers through Advocate. Then also it is stated that her thumb mark and signature was forcibly taken by the applicant. She was then taken to a hotel by four wheeler by the present applicant. She was unable to give the name of the hotel and also the address, but then she states that she as well as the applicant resided there overnight and at that time the applicant had forcibly sexual intercourse with her. On the next day, they went to the house of

one of the friend of applicant No.1 and then they came to know that her father has given missing complaint. She was in the room provided by the friend of the applicant for about two to three days and at that time there were sexual intercourse between them. They reached Shrigonda Police Station on 02-12-2021, and thereafter, her statement was recorded, but then again she states that before coming to police station, threat was given by the applicant that he would commit suicide by leaving a chit in her name, and therefore, she had not told anything to police. Interesting point to be noted is that she further states that from 02-12-2021 to 31-12-2021 her maternal uncle, parents and relatives of applicant No.1 were discussing about their marriage and to settle the dispute, and therefore, she had not lodged the report. Then all of a sudden she appears to have lodged the report.

4. From these contents it can be seen that though she was a major and in spite of refusal of the proposal of marriage between her and the applicant, she continued her talks with the applicant and states that she was in love with him. Possibility cannot be ruled out that she would have voluntarily gone with the applicant and performed the marriage. Now, because of the pressure from her

relatives, she has lodged the report. The photocopies of the certificate by Shri Venkatesh Mangal Karyalaya, Alandi Devachi, Taluka Khed, District Pune, states that there was a marriage between the applicant and the informant girl. She had then given affidavit which was notarized. In her said affidavit she as well as applicant have stated that since they are major, they are taking the decision to marry with each other voluntarily and there is no pressure on her. Their appears to be a tragic end for the love which was shown by the applicant for the prosecutrix as she has lodged report against him stating that he has committed rape on her. When there is prima facie fact that she has done all those things voluntarily and had voluntarily indulged in the sexual relationship, that too after performance of marriage, it will have to be considered by the Trial Court as to whether ingredients of offence under Section 375 of IPC are attracted or not. The custodial interrogation of the applicant is not necessary. Making him available for the purpose of investigation would suffice the ends of justice. This Court had granted interim protection to the applicant on 26-02-2022 on conditions. There is no statement by the prosecution that those conditions are not followed by the applicant. Under such circumstances, the interim relief granted earlier deserves to be

confirmed, accordingly it is confirmed. Hence, following order.

ORDER

- 1) Applicant stands allowed.
- 2) The interim protection granted by this Court on 26-02-2022 to the applicant is hereby confirmed. In other words, in the event of arrest of the applicant Bapu s/o Baba Khurange, in connection with Crime No.904 of 2021, registered with Shrigonda Police Station, District Ahmednagar, for the offence punishable under Sections 363, 366, 376, 504 r.w.34 of IPC, he be released on P.R.Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- 3) He shall not tamper with the evidence of prosecution in any manner.
- 4) He shall remain present before the Investigating officer on every Monday, Wednesday and Friday between 10.00 a.m. to 12.00 p.m. till filing of charge-sheet.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.