

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

13 ANTICIPATORY BAIL APPLICATION NO.424 OF 2021

WITH

CRIMINAL APPLICATION NO.1497 OF 2021

BHAUSAHEB PUNJAJI DUSHING

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. K.S. Kahalekar, Advocate for the applicant

Mrs. V.N. Patil-Jadhav, APP for the respondent

Mr. V.P. Narwade, Advocate for assist to APP

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04th APRIL, 2022

ORDER :

1 Criminal Application No.1497 of 2021 moved for assist to APP stands allowed and disposed of.

2 The applicant, who is presently aged 61, is apprehending his arrest in connection with Crime No.143/2021 dated 08.03.2021 registered with Shrirampur City Police Station, Tq. Shrirampur, Dist. Ahmednagar, for the offence punishable under Section 415, 420, 376, 323, 324, 504, 506 of

the Indian Penal Code, 1860.

3 Heard learned Advocate Mr. K.S. Kahalekar for the applicant and learned APP Mrs. V.N. Patil-Jadhav, well assisted by learned Advocate Mr. V.P. Narwade for the informant.

4 It has been vehemently submitted on behalf of the applicant that the prosecutrix-informant is a widow and a major lady. She is having son aged 19 from her deceased husband. She alleges that after death of her husband, she was residing along with her son, but separately from her in-laws. But then, still the in-laws were near to her. After about two years of the demise of her husband, applicant started going to her house and assuring that he would take care of her as well as her child. It is alleged that the applicant is a money lender and she was in need of money because of the illness of her son. She, therefore, borrowed some money from the applicant and also repaid the same. Applicant thereafter started pressurizing her to cohabit with him and once forcibly entered her house and ravished her. When she wanted to lodge report against applicant; yet the applicant persuaded and the complaint application though filed came to be disposed of by the police. Again the applicant started giving promises and established physical relations with her. It is then stated that in the month of May, 2020

he had taken her to a church and accepted her as wife. Thereafter, the informant came to know that the applicant is having illicit relations with another lady and, therefore, questioned him, at that time, applicant had assaulted her. Then, she had approached Women's Dispute Redressal Forum in August, 2020. Applicant then pretended nicely to cohabit with the victim and when she was in the market, again she saw the applicant along with the lady, with whom he was in illicit relations. Thus, the informant says that she has been cheated and physical relations has been established under fraud, misconception and that consent is no consent at all. However, taking into consideration the long relationship of 11 years it is unbelievable that the applicant kept on promising and the informant believed it to be true. There is long delay in lodging the First Information Report. Custodial interrogation is therefore not required for the purpose of interrogation. The applicant is ready to abide by the terms of the bail. It was also pointed out that this Court had granted interim bail to the applicant on 26.04.2021 and the said interim protection deserves to be confirmed.

5 Per contra, the learned APP, well assisted by learned Advocate Mr. V.P. Narwade for the informant, objected the application and submitted that even at the age of 61 though the acts appear to have been done by him since his age of 50 and twice or thrice the informant had tried to lodge report

against him each time the applicant prevailed over the informant not to lodge the report and he extracted the situation, he does not deserve any sympathy. Even now, he is also threatening the informant, for which she has lodged the non cognizable report under Section 323, 504, 506 of the Indian Penal Code with Shrirampur City Police Station on 05.07.2021.

6 At the outset, the conduct of the applicant is required to be considered. When this Court had granted interim protection on 26.04.2021 it was for three weeks only. But thereafter it appears that the said interim protection was never got extended. The learned Advocate for the applicant has not made a statement that in view of the said order passed by this Court whether the applicant had attended the police station. One of the conditions that was imposed even at the time of interim protection that he shall not tamper with the evidence or influence the witnesses and also that he shall not try to contact the informant. Still the non cognizable report came to be filed on 05.07.2021. That means, he has not abided by the terms of the interim protection. Under such circumstance, he does not deserve any sympathy.

7 The police had not taken cognizance of the complaint tried to be filed by the informant. Under such circumstance, it appears that she had taken recourse of approaching the Court of Judicial Magistrate First Class,

Shrirampur by filing criminal case which was registered as Criminal Miscellaneous Application No.74/2021 and then after considering all the aspects the learned Magistrate had directed the investigation to be carried out by the Shrirampur City Police Station under Section 156(3) of the Code of Criminal Procedure. That order came to be passed on 02.03.2021. That order has not been challenged at all by the applicant. All the circumstances have been narrated by the informant, as to how the applicant had approached to her, gave promises and in fact, the informant is of half the age of the present applicant. It gives prima facie an impression that the present applicant had tried to encash the situation, in which the widow was. Under such circumstance, the extraordinary discretionary relief under Section 438 of the Code of Criminal Procedure cannot be granted to the applicant. Therefore, the application stands rejected.

(Smt. Vibha Kankanwadi, J.)