

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

ANTICIPATORY BAIL APPLICATION NO.955 OF 2022

SAMADHAN DAGDUBA PALODE  
VERSUS  
THE STATE OF MAHARASHTRA

...  
Advocate for Applicant : Mr. Sanjeev B. Deshpande  
APP for Respondent : Mr. K. S. Patil  
...

**CORAM : S. G. MEHARE, J.**

**DATE : 05-08-2022**

**PER COURT :-**

Heard the learned counsel for the applicant and the learned APP for the respondent/State.

2. It has been alleged against the applicant that on the day of the incident, the applicant lefted the prosecutrix and took her in old village. There he removed her pant and shirt, touched her breasts and did forceful sex with her.

3. The learned counsel for the applicant would submit that the applicant had consensus relations with the victim. He never took her forcefully nor committed the forceful sex as alleged. He would point out that the victim has made distinct statements before the distinct authorities. He would refer to narration of the victim before the medical officer. She had stated that she herself went to meet the applicant on 27.03.2022 at about 11.00 p.m. She went

out of home for latrine. The accused called her and removed clothes and forced her for physical contact. In short, she did not state that the applicant committed forceful sex with her.

4. The learned counsel referred to the statement of the victim under Section 164 of the Code of Criminal Procedure in which she has stated nothing incriminating against the applicant. Referring to this document, the learned counsel for the applicant has vehemently argued that, the complainant has no complaint against the applicant. However, she has been forced to lodge the complaint. The applicant never had sex with her. *Prima facie*, the medical report also does not support the prosecution, that there was a forceful sex. Therefore, the applicant may be released on anticipatory bail.

5. The learned APP would submit that the charge-sheet has been filed against the applicant. The serious allegations have been levelled against the applicant in the FIR. However, the statement of the victim is not consistent, as pointed out by the learned counsel for the applicant. The medical opinion is that there are signs of vaginal penetration, however, sexual violence cannot be ruled out. The final opinion is reserved till receipt of forensic science laboratory report. He would submit that earlier the victim had made serious allegations against the applicant. The offence is serious. Hence, the custodial interrogation of the applicant is essential.

6. Perused the papers. In the first instance, it has been alleged by the complainant against the applicant that the applicant had taken her forcefully in the old village, but, the place of alleged incident has not been disclosed. She narrated a new story before the medical officer and literally did not state against the applicant about the forceful sex. These facts support the contention of the applicant that she has consensual sex with the applicant. No doubt, the offence is apparently serious, but, the facts of the case cannot be ignored. There are elements of consensual relations between the applicant and the victim. There were no injuries on the person of the victim. The circumstances are favourable to the applicant for anticipatory bail. Hence, the following order :-

- i) The application is allowed.
- ii) In the event of arrest, the Samadhan Dagduba Palode be released on bail on executing PB and SB of Rs.20,000/- with one solvent surety of like amount, in C.R.No. 47 of 2022, registered with Hasnabad Police Station, District Jalna, for the offence punishable under Sections 376 and 506 of the Indian Penal Code, on the condition that he shall not tamper the prosecution evidence and he shall not contact with the victim or any other witnesses till the conclusion of the trial.

**( S. G. MEHARE )  
JUDGE**