

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 ANTICIPATORY BAIL APPLICATION NO.1145 OF 2021

NITIN YASHWANT SHENDE

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. V.B. Patil, Advocate for the applicant

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

...

WITH

APPLICATION FOR CANCELLATION OF BAIL NO.174 OF 2021

X.Y.Z.

VERSUS

NAGINDAS DAYARAM INGALE AND OTHERS

...

Mr. C.V. Dharurkar, Advocate for the applicant

Mr. B.B. Deshmukh, Advocate for respondent Nos.1 to 4

Mrs. V.N. Patil-Jadhav, APP for the respondent No.5

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 13th JANUARY, 2022

ORDER :

1 Since both the applications are connecting to Crime

No.281/2021 registered with Raver Police Station, Dist. Jalgaon they are considered together.

2 In Anticipatory Bail Application No.1145 of 2021 the applicant is apprehending his arrest in connection with the said crime i.e. Crime No.281/2021 dated 16.08.2021 for the offence punishable under Section 376, 420, 500, 506 read with Section 34 of the Indian Penal Code, whereas in Application for Cancellation of Bail No.174 of 2021 the victim is praying for cancellation of bail under Section 439(2) of the Code of Criminal Procedure that the bail granted to respondent Nos.1 to 4 under Section 438 of the Code of Criminal Procedure be cancelled. Their Bail Application Nos.529/2021 and 536/2021 respectively were granted by learned Additional Sessions Judge, Bhusawal on 09.09.2021.

3 The learned Advocate appearing for the applicant in Anticipatory Bail Application No.1145 of 2021 vehemently submitted, after taking this Court through the First Information Report that the prosecutrix-informant is a major girl. She has admitted that she was in love with the applicant and as a result of which she had got into the physical relationship with the applicant. Therefore, when it is a consensual relationship, offence under Section 375 punishable under Section 376 of the Indian Penal Code cannot be said to be made out. It is to be noted that he has stated in the application

itself that she was well aware about the fact that the applicant was married and blessed with son. She kept the physical relations with the applicant. There is no evidence to show that she was induced by the applicant to keep physical relationship. There is no element of cheating on the part of the applicant. On the contrary, the applicant had given a written complaint to Raver Police Station on 19.04.2021 contending that the prosecutrix is black mailing him. The copy of the said complaint has been annexed. Further, it can be seen that the applicant and the informant have entered into an amicable settlement on 15.05.2021 and a deed to that effect has been executed, which has been produced on record. Till date the applicant has paid amount of Rs.4,50,000/- to her and payment of Rs.2,50,000/- is by way of cheque to her. This shows that it is a case of black mailing to the applicant. The applicant has cleared her outstanding loan on the basis of the payments made by the applicant. He has also made payment regarding the medical expenses of her father. Documentary evidence has been produced along with the application to support his said contention. The First Information Report further discloses that when the prosecutrix got acquainted with the applicant, their friendship has turned into love and they were chitchatting with each other on WhatsApp messenger. The screenshots of their WhatsApp chat have been made available along with the petition. All these documents show that she is a consenting party and willingly entered

into physical relationship with the applicant and now, when the applicant does not want to continue with that relationship, she is black mailing and she has filed false report. The applicant's physical custody is not required for the purpose of investigation. He is a public servant i.e. working as a Branch Manager with Central Bank of India, Branch Yawal. He is the only earner in the family. He is ready to abide by the terms of the bail.

4 Per contra, the learned APP well assisted by learned Advocate Mr. C.V. Dharurkar for the prosecutrix vehemently submitted that the contents of the First Information Report would show that the consent of the prosecutrix has been obtained by keeping her in dark. That the applicant is already married. In fact, she was regular customer of the Bank, where the applicant was serving as a Branch Manager. The prosecutrix had taken loan from the Bank on 31.12.2019 and it was sanctioned by the applicant after considering her papers. Thereafter, friendship between the applicant and the prosecutrix started. 6-7 weeks thereafter the applicant had even sanctioned loan to the father of the prosecutrix amounting to Rs.1,00,000/-. Further amount of Rs.20,000/- was granted as Personal Loan to the prosecutrix. Thereafter the applicant started visiting the house of the prosecutrix and started talks about the marriage with her parents. He had put a proposal of marriage and which was accepted by the parents of the prosecutrix. When

the assurance was given by the applicant that he would perform the marriage with the prosecutrix, he had then taken her to the place he was residing and then there were physical relationship between them. He used to call the prosecutrix on different occasions and used to have sexual relations. Thereafter, he used to ask her parents that they should allow the prosecutrix to accompany him on the count that he is trying for job for her, and used to take at different places for satisfy his lust. When her father developed suspicion about the conduct of the applicant, he straightaway told the applicant that he should perform marriage, otherwise this immoral thing is not proper. Thereafter, when the prosecutrix took up the subject with the applicant about the marriage, he flatly told that he is already married and has son. In the First Information Report, she has stated that this thing has happened in May, 2021 and she then states that she had gone to lodge report with the Raver Police Station on 15.05.2021, but the police officer refused to take it and asked her that since she is yet to marry, she would be defamed. Then she says that she had contacted other police officer i.e. Deputy Superintendent of Police and also the friends of the applicant had threatened her to defame if she lodges any report. She has clearly stated that they asked the prosecutrix to behave the way applicant is saying. They gave her cheque issued by the applicant and told that she should mitigate the loan. However, thereafter, the applicant had instigated his news reporter friend to defame the

prosecutrix and it has caused defamation of the prosecutrix. She had ultimately gave complaint application to Dy. S.P on 04.07.2021. When her application went to Raver police, the police had made phone call to the applicant and the applicant had then visited the Police Station about two days thereafter. It shows that the applicant is pressurizing the police persons. These are the contents of the First Information Report, that has been lodged. It shows that the alleged consent of the prosecutrix is not willingly given but it has been obtained by suppressing real facts.

5 Learned Advocate appearing for the informant-prosecutrix has relied on the recent decision by Division Bench of this Court (Nagpur Bench) in **Navneet Ashok Bangalkar vs. State of Maharashtra and another, Criminal Application (APL) No.853 of 2021**, decided on 22.12.2021, wherein the application was filed under Section 482 of the Code of Criminal Procedure to quash the First Information Report filed for the offence punishable under Section 376, 417 of the Indian Penal Code. It has been observed that in **Pramod Suryabhan Pawar vs. The State of Maharashtra and another, (2019) 9 SCC 608** it has been held that -

“The consent based on misconception of fact is not a consent in the eye of law. The woman engaged in sexual relations on false promise to marry clearly indicate that the consent is based on misconception of fact and such sexual act would amount to rape.”

It was further held that -

“The allegations made in the First Information Report on its face must indicate that the promise by the accused was false or that the prosecutrix engaged in sexual relations on the basis of such promise.”

Further, it has been observed that -

“In this case, the facts stated in the First Information Report and the conduct of the applicant would clearly show that the intention and the motive of the applicant was sinister. He established the sexual intercourse against the will of the non-applicant No.2 by obtaining her consent under the promise to marry. In our view, such a consent could not be said to be free consent. The consent given under the misconception of fact could not be said to be free consent. The prima facie analysis of the material placed on record clearly indicate that no case has been made out to quash and set aside the First Information Report.”

Therefore, learned APP prayed for the rejection of the bail.

6 In respect of Application for Cancellation of Bail No.174 of 2021, the learned Advocate for the original prosecutrix submitted that the learned Additional Sessions Judge, Bhusawal had not taken into consideration the seriousness of the offence and the role played by the respondent Nos.1 to 4 as alleged in the First Information Report. It is simply said that those applicants are not the main accused persons and no question of recovery is from their

possession and on that count their anticipatory bail application came to be allowed. The learned Additional Sessions Judge failed to consider that the prosecutrix had gone to lodge the report, however, it was not even accepted by the then Police Inspector of Raver Police Station. Prosecutrix was required to fight for registration of the First Information Report and she was forced to sign on the stamp paper, which has now been used by the applicant in Anticipatory Bail Application No.1145 of 2021 to state that it is an act of black mailing. The prosecutrix has been defamed by the respondents and, therefore, it was not the fit case to grant anticipatory bail to the respondent Nos.1 to 4.

7 The learned Advocate appearing for respondent Nos.1 to 4 submitted that all the documents were considered by the learned Additional Sessions Judge. Contents of the First Information Report disclose that these respondents had allegedly forced the prosecutrix to sign on blank stamp paper. The respondent Nos.1 to 4 were not at all beneficiary of the act. It was the transaction between the main accused and the prosecutrix. The respondent Nos.1 to 4 are the reputed persons from different place and could not have come together against the prosecutrix. Even allegations have been made against the Deputy Superintendent of Police, Faijpur Division and he has been tried to be roped as accused. When the First Information Report

states that he had suggested the prosecutrix that she should give a complaint application to him, the physical custody of the respondent Nos.1 to 4 was not necessary for the purpose of investigation and, therefore, their applications came to be allowed. Conditions were imposed and they are abiding by the said conditions.

8 First of all, this Court would like to deal with the bail application under Section 438 of the Code of Criminal Procedure filed by the applicant in Anticipatory Bail Application No.1145 of 2021. He is the Branch Manager of the Bank from which the prosecutrix is stated to have taken loan. The contents of the First Information Report are already narrated and, therefore, they are not reproduced here. Those contents would indicate as to how the prosecutrix developed acquaintance with the applicant. In view of the decision in **Pramod Pawar** (supra) it can be said that the First Information Report on the face of it does not disclose that the present applicant had disclosed his married status before the prosecutrix and the applicant entered into the physical relationship. The contents of the First Information Report rather disclose that it was the applicant, who had put the proposal of marriage before the parents of the prosecutrix and at this prima facie stage, it can be inferred that the parents would have definitely made inquiry with the applicant about his status, as to whether he had earlier married or not and

about his family background. That means, whatever consent was obtained, as the contents of the First Information Report indicate, was after the proposal put by the applicant for marriage with the prosecutrix was accepted by the parents of the prosecutrix. That means, a false promise to marry was made by the applicant. Therefore, this Court, at this stage, does not agree with the submissions on behalf of the applicant that this is a clear case of consensual sex.

9 The WhatsApp chats have been produced, however, this Court, at this stage, cannot go into the same, as that piece of evidence will have to be proved by the applicant under the four corners of the Evidence Act, at the time of trial.

10 Defence was raised about the black mailing allegedly done by the prosecutrix and with the help of the amount given by the applicant she has mitigated the loan. We cannot take whatever the applicant is saying as gospel truth, because in the First Information Report the prosecutrix is alleging that, that cheque was given by the applicant through the co-accused persons and her signatures were obtained on blank stamp paper. The applicant is relying upon his own complaint made against the prosecutrix on 19.04.2021. Interesting point to be noted is that the police have not taken cognizance of his complaint and after that complaint application the

applicant says that the alleged settlement took place between him and prosecutrix on 15.05.2021. In his complaint application, there is absolutely no whisper about the consensual relationship between the applicant and the prosecutrix and it states only about one incident dated 17.04.2021, which alleged to have taken place in the Bank. If there was no such relationship between them, if the said complaint dated 19.04.2021 is to be considered, then, why there was necessity for the applicant to enter into any settlement and give so much of huge amount. The said stamp paper, copy of which has been produced, appears to have been purchased by the applicant. The applicant appears to be using double standards. At one place, he is supplying the money to the prosecutrix and on the other hand, he is making allegations against her about black mailing. Therefore, taking into consideration the contents of the First Information Report and the above said reasons, this is not a fit case where this Court should exercise its extraordinary powers under Section 438 of the Code of Criminal Procedure, for grant of anticipatory bail to the applicant.

11 Now, turning towards another application for cancellation of bail, it is to be noted that though the presence of the respondent Nos.1 to 4 has been stated by the prosecutrix in her First Information Report, she has not specifically disclosed as to when the said incident had taken place.

Further, it appears that she had waited in between for a longer period and she has also not stated, as to what connections these respondent Nos.1 to 4 have with the applicant. The documents before learned Additional Sessions Judge, Bhusawal at the time of deciding the bail applications, filed by respondent Nos.1 to 4, were also not indicating as to what interest these respondents have in the matter. Therefore, with those observations that nothing is required to be recovered from the possession of the respondent Nos.1 to 4, their physical custody is not required. The bail came to be granted to the respondent Nos.1 to 4. There is no illegality or error committed by the learned Additional Sessions Judge, Bhusawal and, therefore, the application under Section 439(2) of the Code of Criminal Procedure filed by the prosecutrix deserves to be rejected.

12 For the above said reasons, following order is passed.

ORDER

1 Anticipatory Bail Application No.1145 of 2021 as well as Application for Cancellation of Bail No.174 of 2021 stand rejected.

(Smt. Vibha Kankanwadi, J.)